

# FORT MYERS BEACH LAND DEVELOPMENT CODE

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## CHAPTER 34 ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

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## ARTICLE I. IN GENERAL

### Sec. 34-1. Purpose and intent of chapter.

(a) The purpose of this chapter is to encourage and promote, in accordance with present and future needs, the safety, health, order, convenience, prosperity, and general welfare of the citizens of the Town of Fort Myers Beach, to recognize and promote real property rights, and to provide:

- (1) for efficiency and economy in the process of development,
- (2) for the appropriate and best use of land,
- (3) for preservation, protection, development, and conservation of the historical and natural resources of land, water, and air,
- (4) for convenience of traffic and circulation of people and goods,
- (5) for the use and occupancy of buildings,
- (6) for healthful and convenient distribution of population,
- (7) for adequate public utilities and facilities,
- (8) for promotion of the amenities of beauty and visual interest,
- (9) for protection of the character and maintenance of the stability of residential and business areas, and
- (10) for development in accordance with the Fort Myers Beach Comprehensive Plan.

(b) These purposes are furthered by establishing zoning districts and by regulating the location and use of buildings, signs, and other structures, water, and land, by regulating and limiting or determining the height, bulk, and access to light and air of buildings and structures, the area of yards and other open spaces, and the density of use. To accomplish these objectives, the regulations and districts and accompanying maps have been designed with reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses.

(c) No building or structure, or part thereof, shall hereafter be erected, constructed, reconstructed, altered, or maintained, and no existing use, new use, or change of use of any building, structure, or land, or part thereof, shall be made or continued except in conformity with the provisions of this code. Special regulations apply to certain nonconforming

buildings and uses as provided in article V of this chapter.

(d) Other chapters of this code also provide standards that supplement this chapter. For example, ch. 10 includes standards for:

- (1) Mandatory construction of sidewalks during development along major streets; see § 10-289.
- (2) Approved piping materials for use in rights-of-way; see § 10-296(d).
- (3) Driveways that cross drainage swales, including residential driveways; see § 10-296(o).
- (4) Stormwater discharge and erosion control requirements; see § 10-601–608.

### Sec. 34-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates a different meaning:

***Abutting property***, unless specifically stated otherwise within this chapter, means properties having a boundary line, or point or portion thereof, in common, with no intervening street right-of-way or easement, or any other easement over 25 feet in width.

***Access, vehicular*** means the principal means of vehicular ingress and egress to abutting property from a street right-of-way or easement.

***Accessory apartment***. See §§ 34-1177–1178.

***Accessory building or structure***. See *Building or structure, accessory*.

***Accessory use***. See *Use, accessory*.

***Administrative office*** means an office which is customarily ancillary and subordinate to the permitted principal use of the property and which is used for clerical and administrative functions of the principal use. This term shall be interpreted to include managers or association offices for residential rental property, subdivisions, recreational vehicle parks and similar type activities.

***Aggrieved person or party*** means anyone who has a legally recognizable interest which is or which



may be adversely affected by an action of or an action requested of the town council or any other person or board that has been delegated such authority by the town council.

**Alter** and **alteration** mean any change in size, shape, character, or use of a building or structure.

**Amateur radio antenna/tower** means a structure erected and designed to receive or transmit radio waves by licensed amateur radio operators.

**Amusement device** means any mechanical device or combination of devices which carries or conveys passengers on, along, around, over, or through a fixed or restricted course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement. This definition shall specifically include all amusement devices, amusement attractions, and temporary structures regulated by F.S. ch. 616 and the state department of agriculture and consumer services.

**Amusement device, permanent** means a device which is used, or intended to be used, as an amusement device or amusement attraction that is erected to remain a lasting part of the premises.

**Animal clinic or kennel** means an establishment providing for the diagnosis and treatment of ailments of animals other than humans, or for the temporary care of more than four dogs or cats (except litters of four months of age or less) for a fee, and which may include facilities for overnight care. See division 7 of article IV of this chapter.

**Applicant** means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity, or their duly authorized representative, commencing proceedings under this chapter.

**Application, town-initiated** means any application in which the town council is designated as the applicant, regardless of whether the town is the owner of the subject parcel.

**Application, owner-initiated** means any application that is not town-initiated.

**Application or appeal** means any matter lying within the jurisdiction of the town council.

**Architect** means a professional architect duly registered and licensed by the state.

**Assisted living facility** means a residential land use, licensed under ch. 58A-5 F.A.C. which may be a building, a section of a building, a section of a development, a private home, a special boarding home, a home for the aged, or similar place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding 24 hours, housing and food service plus one or more personal services for four or more adults not related to the owner or administrator by blood or marriage. A facility offering services for fewer than four adults shall be within the context of this definition if it advertises to or solicits the public for residents or referrals and holds itself out to the public as an establishment providing such services. These facilities are not synonymous with the term "health care facility" or "nursing home." For purposes of this definition only, the term "personal services" means services in addition to housing and food service, which include but are not limited to personal assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications, restoration therapy, and assistance with securing health care from appropriate sources.

**ATM and automatic teller machine** mean an unattended banking station located outside of or away from the principal bank building and in operation beyond normal lobby hours, operated by computerized equipment, and capable of carrying out specific banking transactions.

**Authorized representative** means any person who appears with the permission of and on behalf of another person and who provides legal argument or relevant competent evidence through testimony, submission of documents, or otherwise.

**Automobile fuel pumps** means vehicle fuel dispensing devices providing an accessory use to a permitted retail establishment. No other vehicle service is permitted by approval of automobile fuel pumps. For purposes of determining the number of "pumps," a "pump" may serve only one vehicle at a time. If a pump island contains a pump which can be used simultaneously by two vehicles, then it is counted as two pumps.

**Automobile rental** means the use of any building, land area, or other premises or portion thereof primarily for the rental (not leasing) of automobiles and light trucks. Incidental servicing and maintenance of the rental vehicles, excluding body/frame repair and painting, is a normal ancillary function.

**Automobile repair** means establishments that primarily offer parts installation and general vehicle servicing including diagnostic centers and the servicing of brakes, electrical systems, engines, glass, mufflers, oil, radiators, tires, transmissions, upholstery, etc. Automobile repair establishments may also provide body/frame repair, painting, and similar services when ancillary to general vehicle servicing.

**Bar or cocktail lounge** mean any establishment devoted primarily to the retailing and on-premises drinking of beer, wine, or other alcoholic beverages.

**Beach or bay access** means a right-of-way or easement that provides at least pedestrian access to beaches, bays, canals, or wetlands.

**Bed-and-breakfast inn** means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings. See division 19 of article IV of this chapter.

**Boat** means any vessel, watercraft, or other artificial contrivance used, or which is capable of being used, as a means of transportation, as a mode of habitation, or as a place of business, professional, or social association on waters of the town, including:

- (1) Foreign and domestic watercraft engaged in commerce;
- (2) Passenger or other cargo-carrying watercraft;
- (3) Privately owned recreational watercraft;
- (4) Airboats and seaplanes; and
- (5) Houseboats or other floating homes.

**Boat dealers** are establishments primarily engaged in the display, sales, or leasing of new or used motorboats, yachts, and other watercraft, including boat trailers. Incidental servicing and repairs and the stocking of replacement parts is a normal ancillary function.

**Boat repair and service** means establishments primarily engaged in minor repair service to small watercraft, including the sale and installation of accessories. See *Marina*.

**Boatyard** means a boating or harbor facility located on or having direct access to navigable water for building, maintaining, and performing extensive repair on boats and small ships, marine engines, and equipment. A boatyard shall be distinguished from a marina by the larger scale and greater extent of work done in a boatyard and by the use of dry dock, marine railway, or large capacity lifts used to haul out boats for maintenance or repair. See *Marina*.

**Building** means any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons, animals, chattels, or property of any kind. This definition shall include vehicles situated on private property and serving in any way the function of a building, but does not include screened enclosures not having a roof impervious to weather.

**Building or structure, accessory** means a building or structure which is customarily incidental and subordinate to a principal building or to the principal use of the premises, and located on the same premises. See *Building, principal*.

**Building, conventional** means:

- (1) A building, built upon the site and upon its own permanent foundation, constructed of basic materials such as wood, masonry, or metal or minimally prefabricated components such as roof trusses, wall panels, and bathroom/kitchen modules, and conformable to the locally adopted building, electrical, plumbing, and other related codes; or
- (2) A building manufactured off the site in conformance with F.S. ch. 553, pt. IV (or ch. 9B-1, F.A.C.), subsequently transported to its site complete or in modules and fixed to its own foundation with no intention to relocate.

**Building coverage.** See § 34-634.

**Building heights.** See § 34-631.

**Building material sales** includes establishments selling new or used building materials such as lumber, roofing, siding, shingles, drywall, brick, tile, cement, sand, or gravel.

**Building, principal** means a building in which is conducted the main or principal use of the premises on which the building is situated.

**Bus terminal.** See *Transit terminal*.

**Car wash** means establishments primarily engaged in washing cars or in furnishing facilities for the self-service washing of cars.

**Carnival** means an enterprise which travels from community to community, generally staying for ten days or less in any one location, and which offers one or more amusement devices or attractions.

**Carport** means a freestanding or attached structure, consisting of a roof and supporting members such as columns or beams, unenclosed from the ground to the roof on at least two sides, and designed or used for the storage of motor-driven vehicles owned and used by the occupants of the building to which it is accessory.

**Clubs.** See *Membership organization*.

**Commercial** means an activity involving the sale of goods or services carried out for profit.

**Commercial accessory use** means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a commercial structure or premises. See *Use, principal*. Typical commercial accessory uses are: *Parking lots, accessory; Storage, indoor; and Telephone booth or pay telephone station*. Various divisions of article IV of this chapter describe permitted commercial accessory uses. Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not commercial accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2.

**Commercial antenna** (see definition in § 34-1442)

**Communication tower** (see definition in § 34-1442)

**Community residential home** means a dwelling unit licensed to serve clients of the state department of children and family services which provides a living environment for one to six unrelated residents who operate as the functional equivalent of a family, including such supervision and care by a supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Residents include only aged persons as defined in F.S. § 400.618(3), as amended; physically disabled or handicapped persons as defined in F.S. § 760.22(7), as amended; developmentally disabled persons as defined in F.S. § 393.063(11), as amended; nondangerous mentally ill persons as defined in F.S. § 394.455(3), as amended; or children as defined in F.S. § 39.01(8) and F.S. § 39.01(10), as amended.

**Compatible** means, in describing the relation between two land uses, buildings or structures, or zoning districts, the state wherein those two things exhibit either a positive relationship based on fit, similarity or reciprocity of characteristics, or a neutral relationship based on a relative lack of conflict (actual or potential) or on a failure to communicate negative or harmful influences one to another.

**Comprehensive plan** means the document, and its amendments, adopted by the town council pursuant to F.S. ch. 163, for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the town. The terms “comprehensive plan” and “the Fort Myers Beach Comprehensive Plan” are synonymous.

**Continuance.** See § 34-231.

**Continuing care facility (CCF)** means a facility, licensed under F.S. ch. 651, which undertakes through its ownership or management to provide housing and food service to adult residents. The facility must meet the criteria for exemption from the Fair Housing Act Amendments of 1988, title VII USC.

**Contractor's shop** means a room or group of rooms used by a contractor for the custom fabrication of building-related products such as, but not limited to, air conditioning duct work, pool screen enclosures, door trim, etc., and for the interior storage of materials, but which does not

include any exterior fabricating or use any exterior storage area, Specifically prohibited is the storage or parking of heavy construction equipment such as cement trucks, cranes, bulldozers, well-drilling trucks and other similar heavy equipment, or wrecking or demolition debris.

**Contractor's storage yard** means a lot or parcel upon which a contractor maintains an area to store and maintain construction equipment and other materials customarily used in the trade carried on by the contractor. Storage of wrecking debris is prohibited.

**Coastal construction control line.** See definition in § 6-333(a).

**Corner lot.** See *Lot, corner*.

**Cross-access agreement** means an agreement between adjacent property owners in which internal connections are provided between adjoining parking areas in order to minimize the number of driveways from the parking areas to streets.

**Cultural facility** means facilities of historic, educational, or cultural interest, such as art galleries, aquariums, botanical gardens, concert halls, historical sites, and museums.

**Day care center, adult** means a facility or establishment which undertakes through its ownership or management to provide basic services such as but not limited to a protective setting, social or leisure time activities, self-care training, or nutritional services to three or more adults not related by blood or marriage to the owner or operator, who require such services. This definition shall not be interpreted to include overnight care.

**Day care center, child** means a facility or establishment which provides care, protection, and supervision for six or more children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. This definition shall not include public or nonpublic schools which are in compliance with the Compulsory School Attendance Law, F.S. ch. 232. The term "child day care center" is synonymous with the terms "preschool" and "nursery school."

**Deferral.** See § 34-231.

**Denial with prejudice** means that the request being acted upon is formally denied and shall not be resubmitted, except as provided for in § 34-84(4)a.

**Denial without prejudice** means that the specific request being acted upon is formally denied but that a modification of the request may be considered as set forth in § 34-84(4)b.

**Density** means an existing or projected relationship between numbers of dwelling units and land area. See § 34-632 for methods of computing residential densities.

**Developer** means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity commencing development.

**Development and to develop.** A development includes the construction of any new buildings or other structures on a lot, the relocation of any existing buildings, or the use of a tract of land for any new uses. To develop is to create a development.

**Development of regional impact (DRI)** means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

**Deviation** means a departure from a specific regulation of this code, when requested and approved by the town council as part of the application for a planned development (see § 34-932(b)). A deviation is not the same as a variance in that the criteria for granting a variance in § 34-87(3) need not be met.

**Director** means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee.

**Dock** means a structure built across wetlands or open water used for the mooring of watercraft or for fishing, observation, or similar recreational activities.

**Domestic tropical birds** means birds not indigenous to the state or the United States that are commonly kept as pets in a home, including but not

limited to canaries, finches, lovebirds, parrots, parakeets, cockatiels, and mynah birds.

**Double-frontage lot** means any lot, not a corner or through lot, having two or more property lines abutting to a street right-of-way or easement.

**Drive-through** means an establishment or portion thereof where a patron is provided products or services without departing from his automotive vehicle or in which the patron may temporarily depart from his vehicle in a nonparking space while servicing it, such as a do-it-yourself car wash or fuel pump. The terms “drive-through,” “drive-in,” and “drive-up” are synonymous. Drive-throughs are classified as Type 1 when they serve land uses with lower volumes and limited hours such as banks and pharmacies, and Type 2 when they serve land uses that typically have higher volumes and/or extended hours such as convenience stores, automobile fuel pumps, and car washes. See § 34-620(g) regarding the prohibition on drive-through lanes for restaurants and § 34-676(f) regarding drive-through lanes in the DOWNTOWN zoning district.

**Drug paraphernalia.** See § 34-1551.

**Dwelling unit** means a room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis as specified in this code for various zoning districts, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping and sanitary facilities. The term “dwelling unit” shall not include rooms in certain assisted living or continuing care facilities (see § 34-1415) or in lawful accessory apartments in owner-occupied homes (see § 34-1178(d)). See also *Guest unit* and *Living unit*.

**Dwelling unit, types.**

- (1) *Single-family* means a single conventional detached building designed for one dwelling unit and which could be used for occupancy by one family.
- (2) *Two-family* means a single conventional detached building designed as two dwelling units attached by a common wall or roof.
- (3) *Live/work unit* means a single dwelling unit in a detached building, or in a multifamily or mixed-use building, that also accommodates

limited commercial uses within the dwelling unit. The predominate use of a live/work unit is residential, and commercial activity is a secondary use. See § 34-1773.

- (4) *Work/live unit* means a single dwelling unit in a detached building, or in a multifamily, mixed-use, or commercial building, where the predominate use of the unit is commercial. See § 34-1774.
- (5) *Mobile home* means a building, manufactured off the site in conformance with the Federal Mobile Home Construction and Safety Standards (24 CFR 3280 et seq.), subsequently transported to a site complete or in sections where it is emplaced and tied down in accordance with ch. 15C-1, F.A.C., with the distinct possibility of being relocated at a later date. See §§ 34-1921–1950.
- (6) *Multiple-family building* means a group of three or more dwelling units within a single conventional building, attached side by side, or one above another, or both, regardless of whether the land on which the building is located is under common, single, or individual ownership. Freestanding dwelling units with at least one wall on a side or rear property line are also considered to be part of multiple-family buildings. Dwelling units, other than caretaker’s quarters, which are included in a building which also contains permitted commercial uses shall also be deemed to be multiple-family dwelling units.
- (7) *Caretaker* means a single dwelling unit, whether in a freestanding building or part of another structure, that is permitted in some zoning districts as an accessory use to house an on-site caretaker.

**Easement** means a grant of a right to use land for specified purposes. It is a nonpossessory interest in land granted for limited use purposes.

**Engineer** means a professional engineer duly registered and licensed by the state.

**Enlargement and to enlarge.** An enlargement is an addition to the floor area or volume of an existing building, or an increase in that portion of a tract of land occupied by an existing use.

**Entrance gate** means a mechanized control device which is located near the point of access to a development which serves to regulate the ingress of

vehicles to the interior of the development for the purpose of security and privacy.

***Environmentally sensitive land*** means any lands or waters, the development or alteration of which creates or has the potential to create a harm to the public interest due to their value as sources of biological productivity, as indispensable components of various hydrologic regimes, as irreplaceable and critical habitat for native species of flora and fauna, or as objects of scenic splendor and natural beauty. Among these types of land are those designated wetlands.

***Equivalent*** means the state of correspondence or virtual identity of two land uses or zoning districts that exhibit similar levels of effects on each other and the community at large as defined by such factors as their intensities and schedules of use and activity, their demands for services and infrastructure such as roads and water and sewer systems, their impacts on natural resources and other similar parameters. The term “equivalent” is not synonymous with the term “compatible.”

***Essential service building*** means a free-standing building or structure exceeding 6 feet in height or 100 square feet in area that, except for its size would qualify as an “essential services.” See division 14 of article IV of this chapter.

***Essential service equipment*** means an above-ground structure that exceed 27 cubic feet, but less than 6 feet high and 100 square feet in area, and that except for its size would qualify as “essential services” See division 14 of article IV of this chapter.

***Essential services*** means the erection, construction, alteration, or maintenance, by a public or private utility company for the purpose of furnishing adequate service by such company for the public health, safety, or general welfare, of electrical and communication cables, poles, and wires, and water and sewer collection, transmission or distribution mains, drains, and pipes, including fire hydrants. This definition includes necessary transformers, switching equipment, meters, pumps, and similar equipment which is less than 27 cubic feet in size, but does not include communication towers which are regulated by division 11 of article IV of this chapter or telephone booths or pay telephone stations which are regulated by

§§ 34-638(d)(2)e and 34-2019(b). This definition shall not be interpreted to include buildings, structures, or uses listed as “essential service equipment” or “essential service building” (as defined herein). See division 14 of article IV of this chapter.

***Existing only.*** When this term (or its abbreviation EO) is used in Table 34-1, it describes a specific land use that is permitted only if that use lawfully existed on the same property on August 1, 1986. Such lawfully existing use shall have the same rights as a permitted use and may be expanded or reconstructed on the same parcel in accordance with all applicable regulations.

***Family*** means one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family. The term “family” shall not be construed to mean a club, monastery, convent, or institutional group.

***Family day care home***, as defined in F.S. § 403.302, means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. A family day care home shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the caregiver:

- (1) A maximum of four children from birth to 12 months of age.
- (2) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.
- (3) A maximum of six preschool children if all are older than 12 months of age.
- (4) A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.

***Floor area*** means the total area of every story of a building, or portion thereof, within the surrounding exterior walls of the building or structure.

***Floor area ratio.*** See § 34-633.

**Food and beverage service** means the provision of food or beverages for members and guests of a membership organization or recreation hall but not available to the general public. See the provisions of article IV, division 5, of this chapter relating to on-premises consumption of alcoholic beverages.

**Garage sale** or **yard sale** mean an informal sale of used household or personal articles, such as furniture, tools, or clothing, held on the seller's own premises, or conducted by several people on one of the sellers' own premises. Garage and yard sales are limited to not more than one week in duration, with sales limited to two garage or yard sales per year. See *Residential accessory use*.

**Glare** means bright or brilliant light emitting from a point source of light, or reflected or refracted from a point source of light, with an intensity great enough to:

- (1) reduce an observer's ability to see;
- (2) cause an observer to experience momentary blindness or a temporary loss of visual performance or ability; or
- (3) cause an observer with normal sensory perception annoyance or discomfort to the degree which constitutes a nuisance.

**Golf course** means a tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards. Miniature golf is classified as a *Recreation facility, commercial* and not as a golf course.

**Gross floor area** includes the total floor area of a building within the surrounding exterior walls. See also § 34-633.

**Group quarters** means a building in which a number of unrelated individuals that do not constitute a family live and share various spaces and facilities for, for example, cooking, eating, sanitation, relaxation, study, and recreation. Examples of group quarters include assisted living facilities, rooming houses, and other similar uses.

**Guest unit** means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with a

partial or full kitchen. See division 19 of article IV of this chapter.

**Habitable** means space in a structure available for living, sleeping, eating, cooking, or any commercial purposes. However, storage space is not considered to be habitable space.

**Hardship** means an unreasonable burden that is unique to a parcel of property, such as peculiar physical characteristics. Economic problems may be considered but may not be the sole basis for finding the existence of a hardship.

**Health care facility** means an establishment such as a nursing home or hospice that is primarily engaged in furnishing medical, nursing, or other care to persons residing on the premises, but not including hospitals.

**Helistop** means an area, either at ground level or elevated on a structure, licensed, or approved for the landing and takeoff of helicopters, but without auxiliary facilities such as parking, waiting room, fueling, and maintenance equipment.

**Hidden path** means an interconnected system of pedestrian and bicycle pathways throughout the town that improves mobility and promotes community interaction (see Objective 2-A of the Fort Myers Beach Comprehensive Plan).

**Home care facility** means a conventional residence in which up to three unrelated individuals are cared for, but without provision for routine nursing or medical care.

**Home occupation** means a business, occupation, or other activity undertaken for gain carried on by an occupant of a dwelling unit as an accessory use which is clearly incidental to the use of the dwelling unit for residential purposes and which is operated in accordance with the application provisions of article IV, division 18, of this chapter. See also *Dwelling unit, live/work unit* and *Dwelling unit, work/live unit*.

**Hospital** means a medical establishment that offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for injury or infirmity.

**Hotel/motel** means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer. See division 19 of article IV of this chapter.

**Independent living unit** means a unit which is authorized only as a part of a licensed continuing care facility (CCF), which may be equipped with a kitchen.

**Intensity** means a measurement of the degree of customarily nonresidential uses based on use, size, impact, bulk, shape, height, coverage, sewage generation, water demand, traffic generation, or floor area ratios. See also §§ 34-633–634.

**Land** means earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

**Land use** means the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under the Fort Myers Beach Comprehensive Plan or an element or portion thereof, land development regulations, or a land development code, as the context may indicate.

**Landscape architect** means a professional landscape architect duly registered and licensed by the state.

**Laundromat** means a business that provides washing, drying, dry cleaning, or ironing machines for hire for customers to use on the premises.

**Lawful or lawfully** means a building, use, or lot which was permitted by right, special exception, variance, special permit, or other action at the time it was built, occupied, or subdivided, and such building, use, or lot was located in compliance with the comprehensive plan and zoning regulations for the district in which located, or in accordance with the terms of the variance.

**Light trespass** means light emitting from a point source of light that falls outside the boundaries of the property on which the point source of light is located and which constitutes a nuisance to a reasonable person of normal sensory perception.

**Live-aboard** means the use of a boat as a living unit.

**Living unit** means any temporary or permanent unit used for human habitation. See *Dwelling unit* and *Guest unit*.

**Loading space, off-street** means a space logically and conveniently located for pickups or deliveries or for loading or unloading, scaled to delivery vehicles expected to be used and accessible to such vehicles when required off-street parking spaces are filled.

**Local planning agency.** See article II, division 3 of this chapter.

**Lock-off accommodations** means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry, or share a common foyer with separate lockable interior doors, or share a lockable door or doors separating the two units. See § 34-632 and division 19 of article IV of this chapter.

**Lot** means a parcel of land considered as a unit. See also *Lot, corner*.

**Lot area** means the total horizontal area within the lot lines.

**Lot, corner** means:

- (1) A lot located at the intersection of two or more streets where the corner interior angle formed by the intersection of the two streets is 135 degrees or less; or
- (2) A lot abutting a curved street if straight lines drawn between the intersections of the side lot lines and the street right-of-way or easement to the foremost point of the lot form an interior angle of less than 135 degrees.

**Lot line** means a line which delineates the boundary of a lot.

**Lot line, front** means the lot line which separates the lot from a street right-of-way or easement.

**Lot line, rear** means that lot line which is parallel to or concentric with and most distant from the front lot line of the lot. In the case of an irregular or triangular lot, a line 20 feet in length, entirely within the lot, parallel to or concentric with and at the



maximum possible distance from the front lot line, shall be considered to be the rear lot line. In the case of a through lot, there shall be no rear lot line. In the case of a double-frontage lot, the line directly opposite from the front line shall be designated as either a rear line or a side line depending upon the designation of the adjacent property. In the case of corner lots, the rear lot line shall be the line most nearly parallel to or concentric with and most distant from the front lot line most prevalent along the block.

**Lot line, side** means any lot line which is not a front or rear lot line.

**Lot measurement, depth.**

- (1) For lots lawfully created prior to January 28, 1983, depth of a lot shall be considered the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in the front and the rearmost points of the side lot lines in the rear.
- (2) For lots lawfully created after January 28, 1983, depth of a lot shall be considered to be the distance between the front lot line and the rear lot line as measured at the midpoint of the front lot line to the midpoint of the rear lot line. To determine the midpoint of a curved line, a straight line is drawn connecting the points of intersection of the curved line with the side lot lines. A line drawn perpendicular to the midpoint of the straight line to the point it intersects the curved line shall determine the midpoint of the curved line for purposes of this chapter.

**Lot measurement, width.**

- (1) For lots lawfully created prior to January 28, 1983, width of a lot shall be considered to be the average distance between straight lines connecting front and rear lot lines at each side of the lot, measured as straight lines between the foremost points of the side lot lines in front (where they intersect with the street line) and the rearmost points of the side lot lines in the rear.
- (2) For lots lawfully created after January 28, 1983, width of a lot shall be considered to be the distance between the side lot lines (or a front and side lot line for corner lots) as measured along the minimum required street setback line. See § 34-637(c) for exceptions.

**Lot, through** means any lot having two opposite lot lines abutting a street right-of-way or easement.

**Manufactured housing.** See *Building, conventional*.

**Manufacturing** means establishments which are primarily engaged in the mechanical or chemical transformation of materials or substances into new products, as well as establishments primarily engaged in assembling component parts of manufactured products if the new product is not a permanent structure or other fixed improvement.

**Marina** means a commercial water-dependent use located on property adjacent to water with direct access to a navigable channel. The primary function must be to provide commercial dockage, mooring, storage, and service facilities for watercraft and land-based facilities and activities necessary to support the water-dependent use. The term “marina” does not include boatyards, nor does it include cruise ships and similar uses that draw large amounts of vehicular traffic (see § 34-620(f)), nor does it apply to docks, davits, boathouses, and similar docking facilities that are accessory or ancillary and subordinate to:

- (1) residential buildings that are located on the same premises and under the same ownership or control as the docks, davits, boathouses, boat ramps, and similar docking facilities; and
- (2) commercial establishments that are not water-dependent uses.

**Marina accessory uses** means uses normally ancillary and subordinate to a marina, including but not limited to: boat dealers; sale of marine fuel and lubricants, marine supplies, boat motors, and boat parts; restaurant or refreshment facility, boat rental, minor boat rigging, boat repair and service, and motor repair. However, no dredge, barge, or other work dockage or service is permitted and no boat construction or reconstruction is permitted. See *Boatyard*.

**Membership organization** means an organization operating with formal membership requirements with the intent to pursue common goals or activities.

**Mini-warehouse** means any building designed or used to provide individual storage units with separate exterior doors as the primary means of access to individuals or businesses for a fee. The

storage units must be used solely as dead storage depositories for personal property, inventory, and equipment and not for any other use.

**Mixed-use building** means a single building that contains two different land uses, such as commercial and residential uses, or commercial and civic uses.

**Mobile home.** See *Dwelling unit, types*.

**Moor** means to secure a vessel with lines.

**Multiple-family building.** See *Dwelling unit, types*.

**Multiple-occupancy complex** means a parcel of property under one ownership or singular control, or developed as a unified or coordinated project, with a building or buildings housing more than five occupants conducting a business operation of any kind.

**Nonconforming building, nonconforming lot, or nonconforming use** – see definitions in § 34-3202 of article V of this chapter.

**Notary, notarize(d).** Whenever the terms “notarize” or “notarized” appear, they expressly include and contemplate the use of the written declaration set forth under F.S. § 92.525, so long as the cited statutory requirements are met, except that written declarations may not include the words “to the best of my knowledge and belief” as this limitation is not permitted by the provisions of this code.

**Offices, general or medical** mean a room or group of rooms where a business, government, profession, agency, or financial institution provides its services, but excluding uses listed as residential, lodging, retail, marine and civic in division 2 of article III of this chapter and otherwise classified by this code, and excluding uses that the director deems to have potential impacts that differ substantially from conventional office uses. Incidental retail sales and indoor storage may be provided in conjunction with these services. The following types of establishments are not considered to be offices for the purposes of this chapter: *Automobile rental Drive-throughs (Type 1 or Type 2)*; and *Wholesale establishments*. See also *Administrative office*.

**Opaque** means the quality of blocking visibility through a material. For instance, concrete is 100%

opaque; clear glass is 0% opaque; and a picket fence with 3-inch pickets separated by 3 inches of space is 50% opaque.

**Parasailing operations office** means a land-based site that can qualify for a parasailing activity license in accordance with chapter 27 of this code. Parasailing operations offices are permitted as resort accessory uses and also by special exception in certain zoning districts.

**Parcelization** means dividing a given unit of real property into multiple parcels, units, or fractions. Examples of parcelization include, but are not limited to, divisions of land, fractional or timeshare units for specific periods of time, condominiums, and cooperatives.

**Park, neighborhood** means a recreational area open to the public and no larger than one acre that primarily serves the immediately surrounding neighborhood.

**Park, community or regional** means a recreational area open the public and larger than one acre that is designed to serve the entire community or larger areas.

**Parking garage** means a building or structure that allows the parking of motor vehicles on two or more levels, whether the garage is provided only for vehicles of occupants of the principal use or the garage is available for the use of the general public. However, for the purposes of this chapter, a building containing two or more levels of parking only for the vehicles of occupants of the principal use shall not be considered a parking garage if is built below and fully within the perimeter of the remainder of the principal building.

**Parking lot, accessory** means an area of land set aside for the temporary parking of vehicles owned or leased by the owner of the premises, guests, employees, or customers of the principal use. See *Commercial accessory use*.

**Parking lot, shared permanent** means a parking lot which constitutes the principal use of the property and which is available to the public for a fee, or which may be leased to individual persons or assigned to specific businesses or properties.

**Parking lot, seasonal** means a area of land set aside temporarily to provide parking to meet seasonal demands, as set forth in § 34-2022.

**Personal services** means establishments primarily engaged in providing frequent or recurrent services involving the care of a person or his or her personal goods or apparel, such as beauty and barber shops, clothing alterations and repair, health clubs, and laundry drop-off points. The following types of establishments are not considered to be personal services for the purposes of this chapter: *Automobile rentals*, *Car wash*, *Laundromat* (whether self-service or operator-assisted); and *Mini-warehouse*. This chapter contains specific regulations for certain personal services (for example, see §§ 34-3066–3100 on tattoo studios and body piercing).

**Personal watercraft operations office** means a land-based site that can qualify for a personal watercraft vendor's license in accordance with chapter 27 of this code. Personal watercraft operations offices are permitted as resort accessory uses and also by special exception in certain zoning districts.

**Place of worship** means a structure or structures designed primarily for accommodating an assembly of people for the purpose of religious worship, including related religious instruction, church, or synagogue ministries involving classes for 100 or less children during the week, and other church or synagogue sponsored functions which do not exceed the occupancy limits of the building.

**Planned development.** See article III, division 6 of this chapter.

**Plat** means a plat as defined by F.S. ch. 177.

**Plaza** means an unroofed public open space designed for pedestrians that is open to the sidewalk on at least one side.

**Point source of light** means a manmade source emanating light, including but not limited to: incandescent, tungsten-iodine (quartz), mercury vapor, fluorescent, metal halide, neon, halogen, high-pressure sodium, and low-pressure sodium light sources, as well as torches, campfires, and bonfires.

**Premises** means any lot, area, or tract of land.

**Premises, on the same** means being on the same lot or building parcel or on an abutting lot or adjacent building in the same ownership.

**Principal building.** See *Building, principal*.

**Principal use.** See *Use, principal*.

**Processing and warehousing** means the storage of materials in a warehouse or terminal and where such materials may be combined, broken down or aggregated for transshipment or storage purposes where the original material is not chemically or physically changed. The term “processing and warehousing” shall mean an establishment essentially for storage and shipment as opposed to a manufacturing establishment.

**Property line.** See *Lot line*.

**Recreation hall** means a building owned or operated by a condominium or homeowners' association for a social or recreational purpose, but not for profit or to render a service which is customarily carried on as a business.

#### **Recreation facilities.**

- (1) *Recreation facilities, commercial* means recreation equipment or facilities not classified as a *Park, neighborhood or Park, community or regional*, or as personal, private-on-site, or private-off-site recreation facility, but instead operated as a business and open to the public for a fee. (*Golf courses* are defined separately in this section.)
- (2) *Recreation facilities, personal* means recreation equipment or facilities such as swimming pools, tennis, shuffleboard, handball or racquetball courts, swings, slides, and other playground equipment provided as an accessory use on the same premises and in the same zoning district as the principal permitted use and designed to be used primarily by the owners, tenants, or employees of the principal use and their guests. See *Residential accessory use*.
- (3) *Recreation facilities, private ON-SITE* means recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball, or racquetball courts, swings, slides, and other playground equipment which are owned, leased or, operated by a homeowners', co-op, or condominium

association and located in the development or neighborhood controlled by the association.

- (4) *Recreation facilities, private OFF-SITE* means recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball, or racquetball courts, swings, slides, and other playground equipment which are owned, leased or operated by a homeowners', co-op, or condominium association for use by the association's members and guest, but which are not located in the development or neighborhood controlled by the association.
- (5) *Recreation facility, public* means a recreation facility operated by a governmental agency and open to the general public.

**Recreational vehicle** means a recreational vehicle type unit which is so defined in F.S. § 320.01(b). It is primarily designed as temporary living quarters for recreational, camping or travel use, and has its own motive power or is mounted on or drawn by another vehicle. Because the statutory definition set forth in F.S. § 320.01(b) changes, the definition of the term "recreational vehicle," as used in this chapter, is intended to change with such statutory changes so as to be consistent with them. See also § 34-694.

**Recreational vehicle park** means a parcel (or portion thereof) or abutting parcels of land designed, used or intended to be used to accommodate two or more occupied recreational vehicles. See § 34-694 and division 31 of article IV of this chapter.

**Recreational vehicle park, expanded** means the preparation of additional sites, by the construction of facilities for servicing the sites on which the recreational vehicles are to be located (including the installation of utilities, final site grading, pouring of concrete pads or the construction of streets). This shall not be interpreted to include pads for utility rooms, enclosures or storage sheds where explicitly permitted. See division 31 of article IV of this chapter.

**Religious facilities** means religious-related facilities and activities, which may include but are not limited to bus storage facilities or areas, convents, rectories, monasteries, retreats, church or synagogue ministries involving classes for more than 100 children during the week, and assisted living facilities.

**Rental of beach furniture** means a business that provides beach chairs, umbrellas, and similar equipment for a fee. Rental of beach furniture is permitted as a resort accessory use and also by right in certain zoning districts. See divisions 1 and 2 of ch. 14 and § 34-3151.

**Residence.** See *Dwelling unit and Living unit*

**Residential accessory use** means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See *Use, principal*. Typical residential accessory uses are: carports and garages; decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863); fences and walls (division 17 in article IV); garage sales or yard sales (see definition in this section); recreation facilities, personal; seawalls (ch. 26); and storage sheds. Division 2 and other portions of article IV provide regulations for many residential accessory uses.

**Resort** means a mixed-use facility that accommodates transient guests or vacationers as well as longer-term residents. Resorts contain at least one hotel/motel and at least 50 total units, which include a combination of dwelling units and guest units and may also include timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests.

**Resort accessory use** means the use of a structure or premises that is customarily incidental and subordinate to a resort. See *Use, principal*. Typical resort accessory uses are: *Amusement devices* (§§ 34-2141–2145 and 34-3042); *Golf courses*; *Parasailing operations office* (ch. 27); *Personal watercraft operations office* (ch. 27); and *Rental of beach furniture* (ch. 14).

**Restaurant** means an establishment whose principal business is the sale of food or beverages to customers in a ready-to-consume state. See § 34-620(f) regarding the prohibition on drive-through lanes for restaurants.

**Retail store** means an establishment operating within a fully enclosed building that provides goods and incidental services directly to consumers where

such goods are available for immediate purchase or rental. Retail stores are classified as small (less than 5,000 square feet) or large (more than 5,000 square feet), based on gross floor area per establishment. The following types of establishments are not considered to be retail stores for the purposes of this chapter: *Automobile fuel pumps*, *Automobile rentals*, *Marina*, and *Mini-warehouse*.

**Rooming house** means a residential building used, or intended to be used, as a place where sleeping or housekeeping accommodations are furnished or provided for pay to guests or tenants on a weekly or longer basis in which less than ten and more than three rooms are used for the accommodation of such guests or tenants.

**School** means an educational institution run by a public agency, a church or synagogue, or a not-for-profit organization. See division 32 of article IV of this chapter.

**Seawall** has the meaning provided in § 26-41 for both seawalls and retaining walls.

**Setback** means the minimum horizontal distance required between a specified line and the nearest point of a building or structure. See also “build-to” lines in § 34-662 and setback exceptions in § 34-638(d).

- (1) **Street setback** means the setback extending across the front of a lot measured from the edge of an existing street right-of-way or street easement. See definition of “*Lot line, front*” and § 34-638.
- (2) **Side setback** means the setback, extending from the required street setback to the required rear lot line, or opposing street setback in the case of a double-frontage lot, measured from the side lot line. There are two types of side setbacks, those applying to waterfront lots and those applying to non-waterfront lots. See definition of “*Lot line, side*” and § 34-638.
- (3) **Rear setback** means the setback, extending across the rear of a lot, measured from the rear lot line. See definition of “*Lot line, rear*” and § 34-638.
- (4) **Water body setback** means the setback measured from the mean high water line (MHWL), or the control elevation line if applicable, of a water body. See § 34-638.

**Shield** means to establish a visual and sound barrier by the use of a berm, wall, screening, or other methods that will not permit the sound or sight of the facility in question to be apparent from adjoining property.

**Shoreline** means a straight or smoothly curved line which, on tidal waters, follows the general configuration of the mean high-water line, and which on nontidal waters is determined by the annual average waterline. Boat slips and other manmade or minor indentations shall be construed as lying landward of the shoreline and are considered upland when computing the lot area of waterfront property.

**Single-family residence.** See *Dwelling unit, types*.

**Special exception.** See *Use, special exception*.

**Storage** means the safekeeping of any goods, wares, products, or other commodities in any area for more than 48 hours for later use or disposal. The term “storage” includes the keeping of boats, cars, recreational vehicles, etc., for others, whether or not compensation is made to the property owner. The term shall not include animals, nor shall it apply to normally anticipated outdoor display of products for sale such as by boat, mobile home, construction equipment or vehicle dealers, or landscaping materials, or customary and usual activities accessory to agricultural or residential dwellings.

**Storage, dead** means the storage of goods, wares, products, or other commodities, with no sales, conferences, or other human activity other than the placement, removal, or sorting of stored items.

**Storage, indoor** means storage accessory to a permitted use and which is contained wholly within a building. When listed as a permitted or permissible use in the zoning district regulations, it shall not be construed to mean a warehouse or a mini-warehouse. See *Commercial accessory use*.

**Storage, open** means any storage not defined as indoor storage.

**Story (floor)** means that portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above, including space at ground level as the first story

provided it is six feet or more in height. Space within a roofline that is entirely non-habitable shall not be considered to be a story. See § 34-631.

**STRAP number** is a means of property identification which consists of seventeen digits including the section, township, range, area, and parcel numbers.

**Street** means a public or private thoroughfare which affords vehicle access to the principal means of ingress or egress to a lot. The term “street” is synonymous with the terms “avenue,” “boulevard,” “drive,” “lane,” “place,” “road,” and “way,” or similar terms.

**Street right-of-way, existing** is a general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes, which has been dedicated to the public and accepted by the town council or board of county commissioners.

**Structure** means that which is built or constructed. The term “structure” shall be construed as if followed by the words “or part thereof.”

**Surveyor** or professional surveyor means a Professional Surveyor and Mapper (PSM) duly registered and licensed by the state.

**Telephone booth or pay telephone station** means a telephone installation made available for use by the general public for a fee, whether installed in an enclosed booth, attached to a pole, post, or pedestal, or attached to a building. A telephone booth or pay telephone station is not an “essential service” nor “essential service equipment,” nor is it considered to be a “Residential Accessory Use.” See *Commercial accessory use*.

**Temporary use.** See *Use, temporary*.

**Theater** means a building or part thereof that seats more than 200 people and is devoted to showing motion pictures, or for dramatic, musical, or live entertainment.

**Through lot.** See *Lot, through*.

**Timeshare unit** means any dwelling unit, guest unit, or living unit for which a timesharing plan, as defined in F.S. ch. 721, has been established and

documented. See § 34-632 for determining density of timeshare units that include “lock-off accommodations.”

**Transient guest** means any guest registered as provided for in F.S. § 513.01(7), for six months or less.

**Transit terminal** means a location where airport shuttles may stop to load or unload passengers and luggage and which allows convenient transfers to local trolleys and taxis.

**Two-family.** See *Dwelling unit, types*.

**Unified control** means that a single property owner or entity has been authorized by all owners of the property to represent them and to encumber the parcel with covenants and restrictions applicable to development of the property as approved by the town.

**Use** means any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied; or any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

**Use, accessory** means a use of a structure or premises which is customarily incidental and subordinate to the principal use of the structure or premises. See *Use, principal*; *Commercial accessory use*; *Residential accessory use*; and *Resort accessory use*.

**Use, mixed** means the development of land or building or structure with two or more different but compatible uses, such as but not limited to residential, office, retail, commercial, public, entertainment or recreation uses, in a compact urban form.

**Use permitted by right** means a use or uses which, by their very nature, are allowed within the specified zoning district provided all applicable regulations of the town are met. Permitted use includes the principal use of the land or structure as well as accessory uses, unless specifically stated to the contrary.

**Use, principal** means the primary purpose for which land or a structure or building is used.

**Use, public** means the use of any land, water, or building by a public agency for a public service or purpose.

**Use, special exception** means a use or certain specified departures from the regulations of this chapter that may not be appropriate generally or without restriction throughout a zoning district, but which, when controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity, and may be permitted, in accordance with all applicable regulations.

**Use, temporary** means a use or activity which is permitted only for a limited time, and subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter.

**Use variance.** See *Variance, use*.

**Variance** means a departure from the provisions of this chapter or from any town ordinance (excluding building codes) relating to building and other structural setbacks, lot dimensions such as width, depth, or area, structure or building height, open space, buffers, parking or loading requirements, floor area ratio, design, landscaping, and similar regulations. A variance may not involve the actual use of the property, building, or structures, procedural requirements, or definitions. A variance may be granted in accordance with the procedures set forth in § 34-87. See *Variance, use* and *Variance, procedural*.

**Variance, de minimis** means a variance that differs so little from an adopted regulation that the variance's effects on the public health, safety, and welfare would be inconsequential. See § 34-87(3).

**Variance, procedural** means any departure from the procedural requirements of this chapter, chapter 10 or any other ordinance. Procedural variances are never permitted.

**Variance, use** means any departure from the provisions of this chapter and not specifically included in the definition set forth under *Variance* or *Variance, procedural*. The term "use variance" also means any attempt to vary any one or more of the definitions set forth in this chapter, either

directly or indirectly. Use variances are never permitted.

**Vehicle and equipment dealers** means the use of any building or land area for the display, sales, leasing, or storage of automobiles, trucks, trailers, recreational vehicles, construction equipment, and similar vehicles and equipment. See also *Automobile rental* and *Boat dealers*.

**Water-dependent uses** means land uses for which water access is essential and which could not exist without water access.

**Water-related uses** means land uses that might be enhanced by proximity to the water but for which water access is not essential.

**Water, body of** means any artificial or natural depression in the surface of the earth that is inundated with daily tidal flows, and all adjacent wetlands as defined in § 14-293.

- (1) *Artificial bodies of water* means man-made canals and similar water bodies that extend a natural water body into uplands.
- (2) *Natural bodies of water* include the Gulf of Mexico, Matanzas Pass, Estero Bay, Ostego Bay, Buccaneer Lagoon, and similar water bodies that were created by natural geophysical forces.

**Wetlands** are defined in § 14-293. Wetlands in the Town of Fort Myers Beach are generally indicated on the future land use map of the Fort Myers Beach Comprehensive Plan, but the precise boundaries of wetlands shall be determined by this definition.

**Wholesale establishment** means a place of business primarily engaged in preparing and selling merchandise to retailers, other businesses, or other wholesale establishments, and operating completely within an enclosed building.

**Cross reference(s)--Definitions and rules of construction generally, § 1-2.**

**Sec. 34-3. Rules of construction.**

The following rules of construction apply to the text of this chapter:

- (1) Where the term “ordinance,” “law,” “statute,” or “map” is referred to in the text, it is meant to include the phrase “as adopted and as amended from time to time” unless specifically stated to the contrary in the text.
- (2) In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text will control.
- (3) Where this chapter refers to a specific federal, state, county, or town agency, department or division, it will be interpreted to mean “or any succeeding agency authorized to perform similar functions or duties.”

**Sec. 34-4. Applicability of chapter; deed restrictions and vested rights.**

(a) *Scope of chapter.* The provisions of this chapter shall apply uniformly to all land, water, buildings, and structures now or hereafter located in the Town of Fort Myers Beach.

(b) *Deed restrictions.* The provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, safety, and welfare. It is not intended by this chapter to interfere with, abrogate, or annul any easements, covenants, or other agreement between the parties; provided, however, that, where this chapter imposes a greater restriction upon the uses of structures, land, and water, or requires more open space, than is required by other rules or regulations, or by easements, covenants, or agreements, by recorded deed, plat, or otherwise, the provisions of this chapter shall govern. The town shall not be responsible for the enforcement of private deed restrictions.

(c) *Vested rights.* Nothing in this chapter is to be interpreted or construed to give rise to any vested right in the continuation of any particular use, district or zoning classification or any permissible activities therein; and such use, district, zoning classification, and permissible activities are hereby declared to be subject to subsequent amendment, change, or modification as may be necessary to the protection of public health, safety, and welfare.

**Sec. 34-5. Interpretation of chapter.**

(a) The interpretation and application of the provisions of this chapter shall be reasonably and uniformly applied to all property within the Town of Fort Myers Beach. The provisions of this chapter are regulatory.

(b) The provisions of this chapter shall be held to be the minimum requirements adopted for the protection and promotion of the public health, safety, comfort, convenience, order, appearance, prosperity, or general welfare, and for securing safety from fire and other dangers, providing adequate light and air, and preventing excessive concentration of population.

(c) Whenever the regulations and requirements of this chapter are at variance with the requirements of any other lawfully enacted and adopted rules, regulations, ordinances, or laws, the most restrictive shall apply.

**Secs. 34-6--34-50. Reserved.**



## ARTICLE II. ZONING PROCEDURES

### DIVISION 1. GENERALLY

#### Sec. 34-51. Notice of public hearings required.

No public hearing required by this chapter shall be held by local planning agency or town council until notice of the public hearing has been provided in accordance with the requirements set forth in this article.

#### Sec. 34-52. Communications with public officials.

(a) *Definitions.* The following terms and phrases, when used in this section, shall have these meanings:

*Ex parte communication* means any direct or indirect communication in any form, whether written, verbal or graphic, with the town council or local planning agency, by any person outside of a public hearing and not on the record, concerning substantive issues in any proposed or pending quasi-judicial action relating to appeals, variances, rezonings, special exceptions or any other quasi-judicial action assigned by statute, ordinance or administrative code.

*Legislative action* means the formulation of a general rule or policy, such as enacting a comprehensive plan or a comprehensive rezoning of multiple properties.

*Public official* means an elected or appointed member of a town board or commission that recommends or takes quasi-judicial actions, specifically including all members of the town council and the local planning agency. Members of the town staff are not public officials under this definition unless they also serve on a board or commission that recommends or takes quasi-judicial actions.

*Quasi-judicial action* means the application by the local planning agency or town council of a previously adopted general rule or policy that will have an impact on a limited number of persons or

property owners, such as individual appeals, variances, rezonings, and special exceptions.

*Unrestricted communication* means any communication by the public with public officials which are specifically allowed and encouraged, for instance, communications regarding the town budget or the general welfare of the community; or legislative actions such as proposed ordinances or general changes to the Fort Myers Beach Comprehensive Plan.

(b) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the public official is a member.

(1) Except for quasi-judicial actions (such as appeals, variances, rezonings, and special exceptions), the town encourages unrestricted communications between all public officials and town residents, visitors, businesspeople, and property owners.

(2) When discussions on pending quasi-judicial actions (such as administrative appeals, variances, rezonings, and special exceptions) take place *prior to* an advertised public hearing, the following procedures, which mirror those in F.S. § 286.0115(1), shall remove any presumption of prejudice arising from such ex parte communications with public officials:

a. The substance of any ex parte communication with a public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

b. A public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

- c. Public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.
- d. Disclosure made pursuant to subsections a., b., and c. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject public officials to the Code of Ethics for Public Officers and Employees (part III of F.S. ch. 112) for not complying with this paragraph.

#### **Sec. 34-53. Fees and charges.**

(a) The schedule of fees and charges for matters pertaining to this chapter shall be posted in the office where permits applications are filed. The charges listed may be changed by resolution of the town council. In the absence of a resolution by the town council, the director shall charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.

(b) No permit shall be issued and no inspection, public notice, or other action relative to a zoning matter shall be instituted until after such fees and charges have been paid.

#### **Secs. 34-54--34-80. Reserved.**

### **DIVISION 2. TOWN COUNCIL**

#### **Sec. 34-81. Appointment of local planning agency.**

The town council shall appoint the members of the local planning agency.

#### **Sec. 34-82. Initiation of zoning actions.**

The town council or the town manager may initiate rezonings, special exceptions, variances, developments of regional impact, land development code amendments, formal interpretations of this code and the Fort Myers Beach Comprehensive Plan, and other actions as may be specified in this code. See division 4 of this article for specific application requirements.

#### **Sec. 34-83. Land use ordinance amendments or adoption.**

- (1) **Function.** The town council shall hold public hearings on all proposed land use ordinance amendments or adoptions.
- (2) **Considerations.** When deciding whether to adopt a proposed land use ordinance or amendment, the town council shall consider the Fort Myers Beach Comprehensive Plan and the recommendation of the local planning agency.
- (3) **Decisions and authority.** The decision of the town council on any proposed land use ordinance amendment or adoption is final.
- (4) **Appeals.** Appeals of any decision concerning land use ordinance amendments or adoption shall be taken in accordance with applicable state law.

#### **Sec. 34-84. General procedures for actions on specific zoning applications.**

- (1) **Function.** The town council shall hold public hearings (see §§ 34-231 through 34-265) on the following applications: rezonings, appeals from administrative actions, variances, special exceptions, and developments of regional impact.
- (2) **Prior hearings.** Public hearings before the town council shall be held after the local planning agency has held its hearing on these applications and rendered its formal recommendation to the town council, except for appeals of administrative actions, applications for interpretations of this code, and certain interpretations of the comprehensive plan, which shall require only a single public hearing before the town council.

(3) **Decisions and authority.**

- a. In exercising its authority, the town council shall consider the recommendation of the local planning agency where applicable, but may, in conformity with the provisions of this chapter, reverse, affirm, or modify the recommendation, or remand the recommendation to afford due process.
- b. The town council shall not approve any zoning action other than that published in the newspaper unless such change is more restrictive than the proposed zoning published.
- c. The town council has the authority to attach special conditions to any approval of a request for a special exception, development of regional impact, planned development rezoning, or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such special conditions must be reasonably related to the action requested.
- d. The decision of the town council on any matter listed in this section is final. If a decision of approval is not obtained, or if a tie vote results from a motion to grant a request or from a motion to deny a request, then the matter being considered shall be deemed to have been denied, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action in lieu of denial. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion.

(4) **Denials.**

- a. **Denial with prejudice.**
  1. Except when specifically stated otherwise, a denial by the town council is a denial with prejudice.
  2. If an application is denied with prejudice, no similar application for rezoning, special exception, or variance covering the same property, or portion of the property, shall be resubmitted or initiated for a period of 12 months from the date of denial. However, this shall not preclude the application for a different rezoning, special exception, or variance which in the opinion of the director is substantially different from the request originally denied.
- b. **Denial without prejudice.**

1. When the town council denies without prejudice any application, it is an indication that, although the specifically requested action is denied, the town council is willing to consider the same request after modifications have been made, or an application for other action, without the applicant having to wait 12 months before applying for consideration of the modified request or other action.
2. Any resubmitted application shall clearly state the modifications which have been made to the original request or other changes made in the application.
- (5) **Rehearings.** Any rehearings of decisions under this section shall be in accordance with § 34-93.
- (6) **Special magistrate.** Final decisions under this section may be the subject of a request for relief under F.S. § 70.51 or 70.001 (see §§ 34-94 and 34-95).
- (7) **Judicial review.** Judicial review of final decisions under this section shall be in accordance with section 34-96.

**Sec. 34-85. Rezoning.**

- (1) **Function.** The town council shall hear and decide all applications for changes in zoning district boundaries.
- (2) **Considerations.** In reaching its decision, the town council shall consider the following, whenever applicable:
  - a. Whether there exists an error or ambiguity which must be corrected.
  - b. Whether there exist changed or changing conditions which make approval of the request appropriate.
  - c. The impact of a proposed change on the intent of this chapter.
  - d. The testimony of any applicant.
  - e. The recommendation of staff and of the local planning agency.
  - f. The testimony of the public.
  - g. Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
  - h. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

- i. Whether urban services are, or will be, available and adequate to serve a proposed land use change.
  - j. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
  - k. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
  - l. Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
  - m. For planned development rezonings, see § 34-216 for additional considerations.
- (3) **Findings.** Before granting any rezoning, the town council shall find that the requested zoning district complies with:
- a. The Fort Myers Beach Comprehensive Plan.
  - b. This chapter.
  - c. Any other applicable town ordinances or codes.
  - d. For planned development rezonings, see § 34-216 for additional findings.
- (4) **Authority.**
- a. When rezoning land to conventional zoning districts or redevelopment districts (see §§ 34-612(1) and (2)), the town council shall not impose any special conditions or requirements beyond those contained in this code, except as authorized by subsections 34-87(4)b. related to variances and 34-88(4)b. related to special exceptions.
  - b. In reaching decisions on planned development rezonings (see § 34-612(3)), the town council shall proceed in accordance with § 34-216 and shall have the authority to adopt a master concept plan, establish permitted uses, attach special conditions, and grant deviations from this code in accordance with §§ 34-932–933.

#### **Sec. 34-86. Appeals from administrative action.**

- (1) **Function.** The town council will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination, or action of any administrative official charged with the

administration and enforcement of the provisions of this code, or any other ordinance or portion of this code which provides for similar review; provided, however, that:

- a. No appeal to the town council shall lie from any act by such administrative official pursuant to:
    - 1. An order, resolution, or directive of the town council directing him to perform such act; or
    - 2. Any ordinance or other regulation or provision in this code which provides a different appellate procedure.
  - b. The appeal to the town council shall be in writing on forms provided by the director, and shall be duly filed within 30 calendar days, but not thereafter, after such act or decision by the administrative official. The appeal shall specify the grounds for the appeal.
  - c. No appeal shall be considered by the town council where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the town council determines that the case should more appropriately be heard on a request for a variance.
  - d. Appeals from administrative action do not require a public hearing before the local planning agency.
- (2) **Considerations.**
- a. In reaching its decision, the town council shall consider the following criteria, as well as any other issues which are pertinent and reasonable:
    - 1. Whether the appeal is of a nature properly brought for decision, or whether there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
    - 2. The intent of the ordinance which is being applied or interpreted.
    - 3. The effect the ruling will have when applied generally to this code.
  - b. Staff recommendations, the testimony of the appellant, and testimony of the general public shall also be considered.
- (3) **Authority.**
- In exercising its authority, the town council may reverse, affirm, or modify any decision or action of any administrative

official charged with the administration or enforcement of this chapter.

#### Sec. 34-87. Variances.

- (1) **Function.** The town council shall hear and decide all requests for variances from the terms of the regulations or restrictions of this code (except for administrative setback variances as provided in § 34-268) and such other ordinances which assign this responsibility to the town council, except that no use variance or procedural variance as defined in this chapter shall be heard or considered.
- (2) **Considerations.** In reaching its decision, the town council shall consider the following criteria, recommendations and testimony:
  - a. Whether the facts support the five required findings in subsection (3) below;
  - b. Staff recommendations and local planning agency recommendations;
  - c. Testimony from the applicant; and
  - d. Testimony from the public.
- (3) **Findings.** Before granting any variance, the town council must find that all of the following exist:
  - a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not essential to protect public policy;
  - b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;
  - c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
  - d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
  - e. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

#### (4) **Authority.**

- a. The town council has the authority to grant or deny, or modify, any request for a variance from the regulations or restrictions of this code; provided, however, that no use variance as defined in this chapter, or any variance from definitions or procedures set forth in any ordinance, shall be granted.
- b. In reaching its decision, the town council has the authority to attach special conditions necessary for the protection of the health, safety, comfort, convenience, and welfare of the general public. Such special conditions shall be reasonably related to the variance requested.

- (5) **Existing buildings.** Setback, height, and similar variances granted to accommodate an existing building will expire when the building is removed. Redevelopment of the site must then comply with the setback and height regulations in effect at the time of redevelopment.

#### Sec. 34-88. Special exceptions.

- (1) **Function.** The town council shall hear and decide all applications for special exceptions permitted by the district use regulations.
- (2) **Considerations.** In reaching its decision, the town council shall consider the following, whenever applicable:
  - a. Whether there exist changed or changing conditions which make approval of the request appropriate.
  - b. The testimony of any applicant.
  - c. The recommendation of staff and of the local planning agency.
  - d. The testimony of the public.
  - e. Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
  - f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
  - g. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
  - h. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
  - i. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations

pertaining to the use set forth in this chapter.

- (3) **Findings.** Before granting any special exceptions, the town council must find that the applicant has demonstrated that the requested special exception complies with the standards in this section and with:
  - a. The Fort Myers Beach Comprehensive Plan;
  - b. This chapter; and
  - c. Any other applicable town ordinances or codes.
- (4) **Authority.**
  - a. The town council shall grant the special exception unless it finds that granting the special exception is contrary to the public interest and the health, safety, comfort, convenience, and welfare of the citizens of the town, or that the request is in conflict with the criteria in this section.
  - b. In reaching its decision, the town council has the authority to attach special conditions necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such special conditions shall be reasonably related to the special exception requested.

#### **Sec. 34-89. Developments of regional impact.**

The town council shall hold public hearings on all applications for developments of regional impact, in accordance with the requirements of ch. 380, Florida Statutes. If a proposed development of regional impact also requires a rezoning and/or a comprehensive plan amendment, the public hearings shall be held simultaneously provided that all advertising requirements for the individual applications can be met.

#### **Sec. 34-90. Land development code interpretations.**

The town council may hear and decide applications for interpretations of this code as provided in § 34-265. Such applications shall not require a public hearing or recommendation from the local planning agency. Applications for such interpretations must be accompanied by the submittals described in § 34-202(a)(4)–(9); the director may waive any submittals that are not applicable to the type of interpretation being requested.

#### **Sec. 34-91. Comprehensive plan interpretations.**

The town council will hear and decide applications for interpretations of the Fort Myers Beach Comprehensive Plan as permitted by ch. 15 of that plan. The following types of applications will be accepted:

- (1) **Equitable estoppel.** In circumstances where development expectations conflict with the comprehensive plan but judicially defined principles of equitable estoppel may override the otherwise valid limitations imposed by the plan, such expectations may be recognized by the town through a resolution of the town council. Such applications shall not require a public hearing or recommendation from the local planning agency.
- (2) **Appeals of administrative interpretations.** Persons or entities whose interests are directly affected by the comprehensive plan have the right to certain administrative interpretations of the plan as described in ch. 15 of the plan. That section specifies the following procedures for appealing an administrative interpretation:
  - a. An administrative interpretation may be appealed to the town council by filing a written request within fifteen days after the administrative interpretation has issued in writing. In reviewing such an appeal, the town council shall consider only information submitted in the administrative interpretation process and shall review only whether the proper standards set forth in the comprehensive plan have been applied to the facts presented. No additional evidence shall be considered by the town council.
  - b. The town council shall conduct such appellate review at a public meeting to be held within thirty days after the date of the written request for appeal. The town council may adopt the administrative interpretation being appealed, or may overrule it, with a written decisions to be rendered by the town clerk in writing within thirty days after the date of the hearing.
- (3) **Legislative interpretations.** In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the town council which adopted the plan be understood

and applied by subsequent councils, town employees, private property owners, and all other persons whose rights or work are affected by the plan. When the plan is interpreted, it should be done in accordance with generally accepted rules of statutory construction, based upon sound legal advice, and compiled in writing in a document which can be a companion to the plan itself.

- a. **Requests.** Requests for legislative interpretations may be made by any town council member, the town manager, the local planning agency, or any applicant for a type of development regulated by the plan.
- b. **Local planning agency.** Upon receiving a request and written recommendations from the town manager, the local planning agency shall review the same and forward them to the town council with its comments and recommendations.
- c. **Town council.** Upon receiving the recommendations of the local planning agency, the town council shall render a final decision as to the correct interpretation to be applied. This interpretation shall be that which is adopted by absolute majority of the town council, and, upon being reduced to a resolution drafted in response to the council majority, it shall be signed by the mayor and recorded in the town's official records. The town clerk shall be responsible for maintaining copies of all such resolutions in a single document which shall be appropriately indexed and provided to all persons upon request. The document shall be updated regularly and the latest version thereof furnished to all persons requesting copies of the plan itself.
- d. **Legal effect of legislative interpretations.** Any provision of the plan specifically construed in accordance with the foregoing procedures may not be re-interpreted or modified except by a formal amendment of the plan itself. Once formally adopted in accordance with these procedures, the interpretation shall have the force of local law and all persons shall be placed on constructive notice of it. Any development orders issued in reliance on legislative interpretations of this plan are subject to challenge under the provisions of F.S. § 163.3215.

## **Sec. 34-92. Comprehensive plan amendments.**

(a) Amendments to any part of the Fort Myers Beach Comprehensive Plan may be proposed by private parties. All amendments requested during a calendar year will be considered simultaneously with any public amendment proposals put forth by the town council or local planning agency.

(b) Private applications for amendments must be received at town hall by the last business day of the calendar year. Amendment proposals do not need to include all of the information required by § 34-201, but must be sufficient to identify the parties making the request and the exact nature of the request, and must provide adequate supporting material in support of the request.

(c) Proposals to amend the Future Land Use Map must meet Comprehensive Plan Policy 4-C-10.

## **Sec. 34-93. Rehearing of decisions.**

(a) **Timely filing.** Any person who may be aggrieved by any decision of the town council made pursuant to an application for rezoning, development of regional impact, administrative appeal, special exception, or variance may file a written request for a public rehearing before the town council to modify or rescind its decision. The request must be filed with the director within 15 calendar days after the decision. For purposes of computing the 15-day period, the date of the decision is the date of the public hearing at which the town council made such decision by oral motion.

(b) **Written request and response.** All requests for a public rehearing shall state with particularity the new evidence or the points of law or fact which the aggrieved person argues the town council has overlooked or misunderstood, and must include all documentation offered to support the request for a rehearing. In addition, if the request is filed by one other than the original applicant, the director shall notify the applicant of the filing of the request for a rehearing and the applicant shall be allowed 15 days to submit an independent written analysis.

(c) **No oral testimony.** The town council shall decide whether to grant or deny the request for a rehearing based exclusively upon the written request, supporting documentation, any response, and the director's and/or town manager's written analysis thereof. The deliberations of the town

council with respect to the question of whether to grant a rehearing do not constitute a public hearing, and no oral testimony shall be allowed or considered by the town council in the course of these deliberations.

(d) **Judicial review.** The pursuit of a request for rehearing is not required in order to exhaust administrative remedies as a condition precedent to seeking judicial review in the circuit court. The proper filing of a request for rehearing will not toll the 30-day time limit to file an action seeking judicial review of final decisions. No judicial review is available to review the town council's decision to deny a rehearing request.

(e) A request for rehearing is not an administrative appeal as that term is used in F.S. § 70.51. Filing a request for rehearing will not toll the time for filing a request for relief under F.S. § 70.51.

(f) Filing of a request for rehearing will not toll the time for seeking relief under F.S. § 163.3215.

**Sec. 34-94. Special magistrate proceedings under the Florida land use and environmental dispute resolution act (F.S. § 70.51)**

(a) **Special magistrate proceedings.** Special magistrate proceedings may be requested by landowners who believe that action on a development order or enforcement of this code is unreasonable or unfairly burdens the use of their property. Special magistrate proceedings are a non-judicial approach to resolving land-use disputes and will be conducted in accordance with state law and any administrative codes designated for that purpose.

(b) **Implementation of special magistrate recommendation.** If the town council elects to adopt the recommendation of any duly-appointed special magistrate, the landowner will not be required to duplicate processes in which the owner previously has participated in to effectuate the recommendation.

(c) **Modification of special magistrate recommendation.** The town council may elect to modify a special magistrate's recommendation and implement it by development agreement, where applicable, or by other method in the ordinary course and consistent with the town's rules and procedures, so long as it does not require the duplication of processes in which the owner has participated in to effectuate the council's will.

(d) **Waiver of procedural requirements.** In order to implement the recommendation of a special magistrate, or a modification of that recommendation, the town council has the authority to waive any or all procedural requirements contained in town ordinances or administrative codes and to directly exercise all authority otherwise delegated to the local planning agency, the town manager or designees, or any other part of town government.

**Sec. 34-95. Proceedings under the Bert J. Harris, Jr., private property rights protection act (F.S. § 70.001).**

(a) **Offers of Settlement.** Within 180 days of the filing of a notice of intent to file a claim under this act, the town may offer to resolve the claim by way of a settlement offer that includes an adjustment of the initial government action. Settlement offers may entail:

- (1) an increase or modification to density, intensity, or use of the owner's property, so long as the density, intensity, and use remain consistent with Fort Myers Beach Comprehensive Plan.
- (2) the transfer of development rights;
- (3) land swaps or exchanges;
- (4) compensation and purchase of the property or property interest, or
- (5) issuance of a development permit or order.

(b) The parties to a dispute arising under the Bert J. Harris, Jr., private property rights protection act may craft settlements that exceed the town's statutory or ordinance authority provided the parties jointly file a judicial action for court approval of the settlement.

(c) In order to implement a settlement offer, the town council has the authority to waive any or all procedural requirements contained in town ordinances or administrative codes and to directly exercise all authority otherwise delegated to the local planning agency, the town manager or designees, or any other part of town government.

**Sec. 34-96. Final decision; judicial review.**

(a) Any final zoning decision of the town council on a specific application may be reviewed by the circuit court unless otherwise provided in this article. This review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. Any such petition



must be filed within 30 calendar days after the decision has been rendered. For the purposes of computing the 30-day period, the date that the decision has been rendered is the date of the public hearing at which the town council made such decision by oral motion.

(b) The person making application to the town council for a final decision entitled to judicial review is a necessary and indispensable party to any action seeking judicial review of that final decision.

(c) This section is not intended to preclude actions pursuant to F.S. § 70.51 (see § 34-94), or actions pursuant to § 163.3215 that challenge consistency of any final zoning decision on a specific application with the Fort Myers Beach Comprehensive Plan.

**Secs. 34-97--34-110. Reserved.**

### **DIVISION 3. LOCAL PLANNING AGENCY**

#### **Sec. 34-111. Agency established.**

The Town of Fort Myers Beach local planning agency (LPA) is hereby established.

#### **Sec. 34-112. Purpose and scope.**

The broad objectives of town planning and the creation of the local planning agency are to further the welfare of the citizens of the town by helping to promote a better, more helpful, convenient, efficient, healthful, safe, and attractive community environment and to insure that the unique and natural characteristics of the island are preserved.

#### **Sec. 34-113. Composition, appointment, and compensation of members.**

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall render a person ineligible for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of Town Council shall be eligible to serve on the local planning agency. Except for

inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

#### **Sec. 34-114. Members' terms and vacancies.**

(a) The term of office of a member of the local planning agency shall be staggered in increments of two years or until a successor has been appointed and has qualified, except that the respective terms of the members first appointed under Ordinance 08-11 shall be up to four members for a one-year term and three members for a two-year term. If otherwise qualified, a member may be repeatedly appointed for an additional term by Town Council without a limitation in number of terms served.

(b) Appointments shall be made annually at the first available meeting of the council in November. The term of any member which would otherwise expire in April, 2008, will be extended to the first available Town Council meeting in November, 2008, or until such member's successor has been appointed, whichever is sooner. The term of any member which would otherwise expire in April, 2009, will be extended to the first available Town Council meeting in November, 2009, or until their successor has been appointed, whichever is sooner.

Vacancies in the local planning agency shall, within sixty days, be filled by the council for the remainder of the term created by such vacancy.

**Sec. 34-115. Forfeiture of office.**

A local planning agency member shall forfeit office if the member:

- (1) Lacks at any time during the term of office any qualification for the office prescribed by town ordinance or state law; or
- (2) Violates any standard of conduct or code of ethics established by law for public officials; or
- (3) Is absent from three regular local planning agency meetings per year without being excused by the local planning agency.

**Sec. 34-116. Election and duties of officers.**

(a) The local planning agency shall elect a chairperson and a vice-chairperson each year at the first meeting of the newly appointed members.

(b) It shall be the duty of the chairperson to preside over all meetings of the local planning agency. In the absence of the chairperson, the vice-chairperson may preside.

**Sec. 34-117. Clerk.**

The town manager or designee shall be the clerk of the local planning agency. It shall be the duty of the clerk to keep a record of all proceedings of the local planning agency, transmit its recommendations when directed by the chairperson, maintain an updated complete file of all its proceedings at town hall, and perform such other duties as are usually performed by the clerk of a deliberative body.

**Sec. 34-118. Rules and procedures.**

The local planning agency shall meet at least eight times per year and shall meet no less often than bimonthly or more frequently at regular intervals to be determined by it, and at such other times as the chairperson or as it may determine. It may adopt rules for the transaction of its business. The rules may be amended from time to time, but only upon notice to all members that said proposed amendments shall be acted upon at a specified meeting. A majority vote of the local planning agency shall be required for the approval of the

proposed amendment. It shall keep a properly indexed record of its resolutions, transactions, findings, and determinations, which record shall be a public record. All meetings of the local planning agency shall be public meetings.

**Sec. 34-119. Employment of staff and experts.**

The local planning agency may, subject to the approval of the town council and within the financial limitations set by appropriations made or other funds available, recommend the town manager employ such experts, consultants, technicians and staff as may be deemed necessary to carry out the functions of the local planning agency. Such technical assistance to the local planning agency shall be under the day-to-day supervision of the town manager.

**Sec. 34-120. Specific functions, powers, and duties as to comprehensive planning and land development regulations.**

The functions, powers, and duties of the local planning agency as to comprehensive planning and adoption of land development regulations shall be to:

- (1) Acquire and maintain such information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions, and provide data for estimates of future conditions. Such information and material may include maps and photographs of man-made and natural physical features, statistics on trends and present and future estimated conditions with respect to population, property values, economic base, land uses, municipal services, various parameters of environmental quality, and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the town and its various parts and the necessary regulation thereof to insure that the unique and natural characteristics of the island be preserved.
- (2) Prepare principles and policies for guiding land uses and development in the town in order to preserve the unique and natural characteristics of the island, to overcome the

- island's present handicaps, and to prevent or minimize future problems.
- (3) Make or cause to be made any necessary special studies on the location, condition, and adequacy of specific facilities in the town or portion thereof. These may include, but are not limited to, studies on housing, commercial facilities, utilities, traffic, transportation, parking, and emergency evacuation.
  - (4) Review proposed land development codes and amendments thereto, and make recommendations to the town council as to their consistency with the comprehensive plan.
  - (5) Recommend to the town council annually whether the proposed capital improvements program is consistent with the comprehensive plan.
  - (6) Make administrative interpretations of the comprehensive plan when such interpretations are referred to the local planning agency by its legal counsel, in accordance with the ch. 15 of the comprehensive plan and § 34-124(3).
  - (7) Request legislative interpretations of the comprehensive plan in accordance with ch. 15 of that plan, when deemed appropriate by the local planning agency.
  - (8) Make recommendations to the town council on legislative interpretations that have been requested in accordance with ch. 15 of the comprehensive plan.
  - (9) Recommend action to the town council on any amendments that are proposed to the comprehensive plan.
  - (10) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the town council such changes in the comprehensive plan as may from time to time be required, including preparation of the periodic evaluation and appraisal reports required by F.S. § 163.3191.
  - (11) Conduct such public hearings as may be needed for updating the comprehensive plan and such additional public hearings as are specified by law.
  - (12) Aid town officials charged with the direction of projects or improvements embraced within the comprehensive plan and generally promote the realization of the comprehensive plan.
  - (13) Cooperate with municipal, county and regional planning commissions and other agencies or groups to further the local

planning program and to assure harmonious and integrated planning for the area.

- (14) Perform any other duties which lawfully may be assigned to it by the town council.

**Sec. 34-121. Functions, powers, and duties as to zoning matters.**

The functions, powers, and duties of the local planning agency as to zoning matters shall be to:

- (1) Prepare recommendations for changes to the boundaries of the various zoning districts, or to the regulations applicable thereto, to the town council.
- (2) Make recommendations on the following to the town council:
  - a. Applications for rezonings including planned developments.
  - b. Applications for developments of regional impact and Florida Quality Developments approval, which may or may not include a request for rezoning.
  - c. Special exceptions.
  - d. Variances from this code and any town ordinance which specifies that variances from such ordinance can only be granted by the town council.
  - e. Extensions of master concept plans for planned developments (see § 34-220(4)).
  - f. Any other applications that require action by the local planning agency pursuant to this code.
- (3) *Authority.*
  - a. The local planning agency shall serve in an advisory capacity to the town council with respect to zoning matters as set forth in subsections (1) and (2) of this section, and in such capacity may not make final determinations.
  - b. The local planning agency shall not recommend the approval of a rezoning, and the town council shall not approve a rezoning, other than the change published in the newspaper pursuant to § 34-236(b), unless such change is more restrictive and permitted within the land use classification as set forth in the Fort Myers Beach Comprehensive Plan.
  - c. In reaching its recommendations, the local planning agency shall have the authority to recommend special conditions to be attached to any request for a planned development, special exception, or variance.

**Sec. 34-122. Functions, powers, and duties as to historic preservation.**

The powers, and duties of the local planning agency regarding historic preservation shall include performing all functions assigned to the historic preservation board as set forth in ch. 22, article II, division 2.

**Sec. 34-123. Cooperation with the local planning agency.**

Each officer and employee of the town is hereby directed to give all reasonable aid, cooperation, and information to the local planning agency or to the authorized assistants of such agency when so requested.

**Sec. 34-124. Legal counsel to the local planning agency.**

The local planning agency have its own legal counsel, whose duties shall include:

- (1) Advising the local planning agency as to its legal responsibilities and options during the conduct of its business.
- (2) Preparing resolutions reflecting actions of the local planning agency.
- (3) Issuing administrative interpretations of the Fort Myers Beach Comprehensive Plan or referring requests for such interpretations to the local planning agency (see § 34-120(6)) when applications are submitted to the town clerk in accordance with chapter 15 of the comprehensive plan.

**Secs. 34-125--34-200. Reserved.**

**DIVISION 4.  
APPLICATIONS AND PROCEDURES**

***Subdivision I. General Procedures***

**Sec. 34-201. General procedure for applications requiring public hearing.**

(a) *Initiation of application.* An application for a rezoning, development of regional impact, special exception, appeal from administrative action, or variance may be initiated by:

- (1) A landowner, or his authorized representative, for his own property; provided, however, that:
  - a. Except as provided in subsections (a)(1)b. and c. of this section, where there is more than one owner, either legal or equitable, then all such owners must jointly initiate the application or petition.
    1. This does not mean that both a husband and wife must initiate the application on private real property which is owned by them.
    2. Where the property is subject to a land trust agreement, the trustee may initiate the application.
    3. Where the fee owner is a corporation, any duly authorized corporate official may initiate the application.
    4. Where the fee owner is a partnership, the general partner may initiate the application.
    5. Where the fee owner is an association, the association or its governing body may appoint an agent to initiate the application on behalf of the association.
  - b. Where the property is a condominium or a timeshare condominium, as defined and regulated in F.S. chs. 718 and 721, respectively, an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners, or by both the owners' association and no less than 75 percent of timeshare condominium unit owners.
    1. For purposes of this subsection, each individually owned condominium unit within the condominium complex and

- each individually owned timeshare unit as defined by F.S. ch. 721 counts as one unit, regardless of the number of individuals who jointly own the unit.
2. In order to verify ownership, the applicants shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number and timeshare period, as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.
  3. So as to protect the legal rights of nonparticipating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents or timeshare documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions therein, or any federal or state law regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.
- c. Where the property is a subdivision, an application or petition may be initiated by no less than 75 percent of the total number of lot or parcel owners and the homeowners' association, if applicable.
1. For purposes of this subsection, a subdivision is an area of property defined by a specific boundary in which lot divisions have been established on a plat that has been recorded in either a plat book or official records book whereby legal descriptions are referred to by lot or parcel number. This term may include any unit or phase of the subdivision and not the entire subdivision.
  2. In order to verify ownership, the applicants shall furnish the town, as part of their application, a complete list of all lot owners, identified by lot number, along with proof that all lot owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.
- (2) The town, which for purposes of this section shall mean the town council or town manager.
- (b) ***Application submittal and official receipt procedure.*** The application procedure and requirements in this section apply to all applications for rezoning, special exceptions, appeals from administrative action, and variances.
- (1) All properties within a single application must be abutting. The director may, at his discretion, allow a single application to cover non-abutting properties where it is in the public interest due to the size or scope and nature of the request, and there is a rational continuity to the properties in question.
  - (2) No application shall be accepted unless it is presented on the official forms provided by the director, or on computer-generated forms containing the same information.
    - a. Forms shall include but not be limited to disclosure forms for corporations, trusts, and partnerships, and disclosure of information regarding contract purchases and their percentages of interest.
    - b. Disclosure shall not be required of any entity whose interests are solely equity interests which are regularly traded on an established securities market in the United States or another country.
    - c. Disclosure forms shall be provided by the director. Such completed disclosure forms shall be included in the materials distributed to the local planning agency and the town council.
    - d. Subsections (b)(2)a. through c. of this section shall not apply to town-initiated rezonings.
  - (3) Before an application may be accepted, it must fully comply with all information requirements enumerated in § 34-202 and 34-203, as applicable, unless specifically stated otherwise in this chapter.
  - (4) The applicant shall ensure that an application is accurate and complete. Any additional expenses necessitated because of inaccurate

or incomplete information shall be borne by the applicant.

- (5) Upon receipt of the completed application form, all required documents, and the filing fee, the director will begin reviewing the application for completeness, or, in the case of planned development applications, begin reviewing the application for sufficiency pursuant to § 34-213.

#### **Sec. 34-202. General submittal requirements for applications requiring public hearing.**

(a) **All applications.** Every request for actions requiring a public hearing under this chapter shall include the following. However, upon written request using a form prepared by the director, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request for a waiver or modification must be submitted to the director prior to submitting the application. A copy of the request and the director's written response must accompany the application and will become a part of the permanent file.

- (1) **Legal description.** A legal description of the property. The application shall include a copy of the plat or plats, if any, and the correct STRAP number(s). If the application includes multiple abutting parcels or consists of other than one or more undivided platted lots, the legal description must specifically describe the perimeter boundary of the total property, by metes and bounds with accurate bearings and distances for every line, but need not describe each individual parcel. However, the application must provide the STRAP number for every parcel. The director has the right to reject any legal description which is not sufficiently detailed to locate the property on official maps.
- (2) **Boundary survey or certified sketch of description.** A certified sketch of description, unless the subject property consists of one or more undivided platted lots in a subdivision recorded in the official Lee County Plat Books. The director may require a boundary survey where there is a question regarding the accuracy of the legal description of the property or a question regarding the location of structure(s) or easement(s) that may be

relevant to the review of the application. All certified sketches and boundary surveys must meet the minimum technical standards for land surveying in the state, as set out in ch. 61G 17-6, *F.A.C.* The perimeter boundary must be clearly marked with a heavy line and must include the entire area that is the subject of the application.

- (3) **Confirmation of ownership.** If at any time during the review process the director concludes there is a question regarding ownership of the property, the director may require submittal of a title insurance policy, attorney's opinion of title, or ownership and encumbrance report.
- (4) **Area location map.** A map, at a suitable scale, drawn on an 8½-inch by 11-inch sheet of paper, that depicts the property described in the legal description in relation to the surrounding neighborhood. The map shall be sufficiently referenced to streets, waterways, and other physical boundaries so as to be clearly identifiable to the general public.
- (5) **Property owners list.** A complete list of all owners of the property subject to this request and their mailing addresses. If multiple parcels are involved, a map showing the owners' interest must be provided. The applicant is responsible for the accuracy of the list and map. For town-initiated actions only, names and addresses shall be deemed to be those appearing on the latest tax rolls of the county.
- (6) **Surrounding property owners list.** A complete list, and two sets of mailing labels, of all property owners, and their mailing addresses, for all property within 500 feet of the perimeter of the subject parcel or the portion thereof that is the subject of the request. This list shall also include the owners of all individual condominium units within the 500-foot perimeter, plus the managing entity of any timeshare properties. For the purpose of this subsection, names and addresses of property owners, condominium owners, and timeshare managers will be deemed to be those appearing on the latest tax rolls of the county at the time of application. The applicant shall be responsible for the accuracy of such list. In the event that more than six months lapses between the time of application and the date of mailing courtesy notices for the scheduled

public hearing, the director may require the applicant to submit a new list and mailing labels.

- (7) **Surrounding property owners map.** The application shall include a zoning map or other similar map displaying all of the parcels of property within 500 feet of the perimeter of the subject parcel or the portion thereof that is subject of the request, referenced by number or other symbol to the names on the surrounding property owners list. The applicant shall be responsible for the accuracy of the map.
- (8) **Additional material.** Additional material, depending on the specific type of action requested, may be required as set forth in §§ 34-202(b) and 34-203.
- (9) **Filing fee.** All fees, in accordance with the fee schedule (see § 34-53), shall be paid at the time the application is submitted.

(b) **Additional submittal requirements for owner-initiated applications.** In addition to the submittal requirements set forth in subsection (a), every application initiated by a property owner involving a change in the zoning district boundaries, or a request for special exception, appeal from administrative action, or variance, for his own property, shall include the following:

- (1) **Evidence of authority.**
  - a. **Ownership interests.** The names of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries (see § 34-201(b)(2)a. through c.).
  - b. **Applicant's statement.** Notwithstanding the requirements of § 34-201(a)(1)a., the applicant for any action requiring a public hearing must sign a statement, under oath, that he is the owner or the authorized representative of the owner(s) of the property and that he has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the action approved by the town in accordance with this code. This must also include a statement that the property owner will not transfer, convey, sell, or subdivide the subject parcel unencumbered by the covenants and restrictions imposed by the approved action.

c. **Agent authorization.** The applicant may authorize agents to assist in the preparation and presentation of the application. The town will presume that any agent authorized by the applicant has the authority to bind the property with respect to conditions.

- (2) **Property restrictions.** The application shall include a copy of the deed restrictions or other types of covenants and restrictions on the subject parcel, along with a statement as to how the restrictions may affect the requested action. If there are no restrictions on the property, the applicant must indicate so on the application form.
- (3) **Boundary sketch.** The boundary sketch shall include the location of existing structures on the property.
- (4) **Confirmation of ownership.** If at any time during the review process the director concludes there is a question regarding ownership of the property, the director may require submittal of a title insurance policy, attorney's opinion of title, or ownership and encumbrance report.
- (5) **Sketch of proposed building.** All applications for planned development zoning, variances, appeals from administrative action (where relevant), and special exceptions must be accompanied by a sketch or sketches that indicate the physical character of the proposed building(s), and in the case of variances, the difference between the proposal and the configuration that would be allowed without the variance.

#### **Sec. 34-203. Additional requirements for certain applications requiring public hearing.**

(a) **Developments of regional impact.** Developments of regional impact shall comply with the information submittal and procedural requirements of F.S. ch. 380, as administered through the Southwest Florida Regional Planning Council. If the development of regional impact requires specific zoning actions (i.e., rezoning), the procedures and requirements of § 34-202 and this section of this chapter shall be met. Additionally, even if the development of regional impact does not require specific zoning action, the applicant must submit a traffic impact statement, as described in § 34-212(6) and detailed in § 10-286. Thresholds

for developments of regional impact can be found in F.A.C. ch. 28-24.

(b) **Planned developments.** Planned development rezonings must comply with the additional submittal requirements in § 34-212. Additional procedural requirements are set forth in §§ 34-211–220.

(c) **Rezoning.** Requests for rezonings shall, in addition to the requirements of § 34-202, include a statement of the basis or reason for the rezoning. Such statement is to be directed, at a minimum, to the guidelines for decision-making embodied in § 34-85(2). This statement may be utilized by the town council and staff in establishing a factual basis for the granting or denial of the rezoning.

(d) **Special exceptions.** Applications for a special exception shall, in addition to the requirements of § 34-202, include the following:

- (1) A statement as to how the property qualifies for the special exception requested, and what impact granting the request would have on surrounding properties. Such statement shall be directed, at a minimum, to the guidelines for decision-making embodied in § 34-88. This statement may be utilized by the town council in establishing a factual basis for granting or denial of the special exception.
- (2) A site development plan detailing the proposed use, including, where applicable, the following:
  - a. The location and current use of all existing structures on the site, as well as those on adjacent properties within 100 feet of the perimeter boundaries of the site.
  - b. All proposed structures and uses to be developed on the site.
  - c. Proposed fencing and screening, if any.
  - d. Any other reasonable information which may be required by the director which is commensurate with the intent and purpose of this chapter.
- (3) *On-premises consumption of alcoholic beverages.* If the request is for a consumption-on-premises permit:
  - a. The site plan must include a detailed parking plan.
  - b. A written statement describing the type of state liquor license to be acquired, e.g., 2 COP, SRX, 11C, etc., and the anticipated hours of operation for the business, must be submitted.

(e) **Variances.** Applications for a variance from the terms of this chapter shall, in addition to the requirements of § 34-202, include the following:

- (1) A document describing:
  - a. The section number and the particular regulation of this code from which relief (variance) is requested;
  - b. The reason why the variance is needed;
  - c. What effect, if any, granting of the variance would have on adjacent properties;
  - d. The nature of the hardship which is used to justify the request for relief; and
  - e. A statement as to how the property qualifies for the variance, directed, at a minimum, to the guidelines for decision-making embodied in § 34-87.
- (2) A site plan describing:
  - a. All existing and proposed structures on the site;
  - b. All existing structures within 100 feet of the perimeter boundary of the site; and
  - c. The proposed variance from the adopted standards.
- (3) Any other reasonable information which may be required by the director which is commensurate with the intent and purpose of this code.

(f) **Use or procedural variances.** Use and procedural variances are not legally permissible, and no application for a use variance nor a procedural variance will be processed. The director will notify the applicant when a more appropriate procedure, e.g., rezoning or special exception, is required.

(g) **Modifications to submittal requirements.** Upon written request, on a form prepared by the director, the director may modify the submittal requirements contained in this section or in other portions of this code where modifications are specifically authorized, where it can be clearly demonstrated by the applicant that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file. The decision of the director is discretionary and may not be appealed.

**Secs. 34-204–34-210. Reserved.**



***Subdivision II.  
Additional Procedures for Planned  
Development Zoning Districts***

**Sec. 34-211. Generally.**

(a) Planned development zoning districts are described in §§ 34-612(3) and 34-931–990.

(b) The application and procedure requirements described in this division are a supplement to the general requirements for rezoning applications found in this article.

(c) The applicant may initiate the planned development process by requesting an optional preapplication conference. In this request, the applicant shall provide a description of the property in question, the location of the property, the existing use, special features, and the use proposed. Through this meeting, the applicant may avail himself of staff in order to be oriented to the planned development process, to determine what application materials are required, and to be advised of the impacts of the Fort Myers Beach Comprehensive Plan, surrounding development and zoning, and other public policy on the development proposal.

**Sec. 34-212. Application for a planned development.**

An applicant for a planned development shall provide the following information, supplemented, where necessary, with written material, maps, plans, or diagrams. Wherever this section calls for the exact or specific location of anything on a map or plan, its location shall be indicated by dimensions from an acceptable reference point, survey marker, or monument.

- (1) **General application.** A general application for public hearing in accordance with the requirements set forth in §§ 34-201, 34-202, and 34-203.
- (2) **Filing fee.** The filing fee (see § 34-53).
- (3) **Evidence of unified control.** The same documentation evidencing unified control as is required by ch. 10 for development orders.
- (4) **Master concept plan.** A clearly legible master concept plan, to be no less than 24 inches by 36 inches in size and at an appropriate scale to adequately show the

proposed development in detail, including the following information:

- a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase;
- b. The maximum height of any proposed buildings or structures, using this code's means of measuring height (see § 34-631);
- c. Proposed principal and accessory land uses, identifying such uses by citing the same uses allowed by a specific zoning district, or by citing the enumerated uses of one or more use groups or sub-groups as found in Tables 34-1 and 34-2 of this article.
- d. The number of units proposed for each use, in terms of dwelling units by type, hotel or motel guest units, gross square feet of types of commercial uses, and maximum floor area ratios (see § 34-633);
- e. The minimum width and composition of any proposed buffers along the perimeter of the subject property. References to types of buffers as described in ch. 10 are acceptable;
- f. The location of any environmentally sensitive land and water, based upon standard environmental data and verified by a field inspection by town staff. An engineering survey is not required until the plan has been incorporated into an application for a development order;
- g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development;
- h. Access and facilities for public transit, where applicable;
- i. The general location of stormwater management areas;
- j. The specific location of any requested deviations, including sample detail drawings that illustrate the effect of the proposed deviation.
- k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded; and
- l. Proposed dedications, if any, including public beach access, boat ramps, park or recreation areas, open space, or other easements.

- (5) **Architectural elevations.** The master concept plan shall be accompanied by architectural elevations or a three-dimensional rendering that show, at a minimum, all building facades adjoining public streets. These drawings may substitute for the sketches required by § 34-202(b)(5). If any aspects of a proposed commercial or mixed-use building do not comply with the commercial design standards in §§ 34-991–34-1010, the applicant may request one or more deviations from those standards in accordance with § 34-932(b).
- (6) **Traffic impact statement.** A traffic impact statement in the same format and to the same degree of detail required for development orders (see § 10-286), unless waived by the director in accordance with § 34-202(a).

#### **Sec. 34-213. Sufficiency and completeness.**

No hearing will be scheduled for any application for a planned development until the application has been found sufficient.

- (1) All applications for planned developments will be deemed sufficient unless a letter advising the applicant of insufficiencies has been mailed within 15 working days of the payment of the application fee. All amended applications will be deemed sufficient unless a subsequent letter advising the applicant of any insufficiencies has been mailed within 15 working days of the resubmittal. The contents of insufficiency letters will be limited to brief explanations of the manner in which insufficient applications do not comply with the formal requirements in this section.
- (2) Subsequent to notification that the application has been found to be insufficient, the applicant has 60 days to submit supplemental or corrected documents, unless a longer time is agreed to in writing by the director and the applicant prior to the expiration of the 60 days. If the supplement or corrections are not submitted within the 60 days (or other time period agreed to) the application will be deemed withdrawn.
- (3) Once an application has been found sufficient, any new information submitted by the applicant, or any changes made to information submitted by the applicant, may, at the discretion of the director, be grounds for a deferral or continuance of the public

hearing, depending on the advertised status of the hearing.

- (4) In those instances where a proposed planned development is identified by the director as a possible development of regional impact, the applicant shall be notified that the application will be deemed sufficient only when accompanied by either a binding letter of interpretation from the state department of community affairs or a complete and sufficient ADA.

#### **Sec. 34-214. Application for an amendment.**

(a) Applications for amendments to an approved master concept plan or its attendant documentation, including a time extension, will require as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses, if any, that have occurred since the original application was made.

(b) In addition, the application and master concept plan must update the entire planned development:

- (1) Precise locations of newly constructed buildings must be shown.
- (2) All deviations previously approved or now requested must be clearly indicated.
- (3) If the land development code has changed since the previous approval, the proposed amendment must be based on the current regulations (for example, the proposed uses and deviations must reflect the terminology and regulations in the current code).
- (4) The intent is to have resolutions that amend a planned development be current and complete and not require references to a previous resolution on the same property.

(c) Some amendments can be approved administratively as provided in § 34-219; the remainder shall proceed through the public hearing process described in § 34-216.

#### **Sec. 34-215. Documentation of unified control.**

(a) Any applicant for a rezoning or master concept plan confirmation under the planned development regulations as provided in this article

shall submit documentation demonstrating unified control over the subject property.

(b) If the initial applicant conveys all or part of the subject property to a subsequent purchaser, the conveyance is subject to the original documentation demonstrating unified control unless amended documentation is filed with the director. This amended documentation must be filed within 60 days of closing in a form acceptable to the town attorney. This requirement shall not apply to individual homesites or units of a residential development or to any development wherein the obligation to enforce the regulations and conditions or covenants and restrictions is delegated to property owners or a condominium association or cooperative

### **Sec. 34-216. Public hearings.**

(a) *Hearing before the local planning agency.*  
After an application is complete, the application will be scheduled for a public hearing before the local planning agency.

- (1) At the public hearing the local planning agency will consider the application in accordance with article II of this chapter.
- (2) The recommendation made to the town council must be supported by the guidelines set forth in § 34-85 of this chapter. In addition, the findings must address whether the following criteria can be satisfied:
  - a. The proposed use or mix of uses is appropriate at the subject location;
  - b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
  - c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
  - d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
    1. Policies 4-B-4 and 4-C-3 on commercial uses in the "Mixed Residential" category.
    2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "Boulevard" category.

3. Policy 4-C-4 on building heights taller than the standard height limit.
  4. Policy 4-C-8 on density transfers.
  5. Policy 4-E-1 on pre-disaster buildback.
  6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.
- (3) If the local planning agency determines that a proposed condition is insufficient, it may recommend an alternate condition for consideration by the town council.
  - (4) If the application includes a schedule of deviations pursuant to §§ 34-212(3) and 34-932(b), the local planning agency's recommendation must approve, approve with modification, or reject each requested deviation based upon a finding that:
    - a. Each item enhances the achievement of the objectives of the planned development; and
    - b. The general intent of this chapter to protect the public health, safety, and welfare will be preserved and promoted; and
    - c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
    - d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.
 If the local planning agency concludes that the application omits necessary deviations, it may include the necessary deviations in its recommendation without an additional hearing.

### *(b) Hearing before the town council.*

- (1) After the local planning agency's hearing, an application for a planned development, together with all attendant information, staff reports, and the local planning agency's minutes and resolution of recommendation, shall be forwarded to the town council, which shall consider the application in public hearing per article II of this chapter. After reviewing all information, including staff reports and local planning agency recommendations, the town council may either:
  - a. Continue further consideration until additional information is provided by applicant or the director or until the applicant makes changes in the application, subject to re-review by the director and the local planning agency as required; or

- b. Formally approve, approve with modification, or deny the application. Should the town council deny without prejudice, it may remand the proposal to the director with directions to bring the application back to the local planning agency once the application is amended. If new or additional information, not previously provided to either the director or the local planning agency, is supplied by the applicant after the local planning agency hearing, the town council may remand the application to the local planning agency for rehearing.
- (2) The decision of the town council shall be supported by a formal finding, that, in addition to the appropriate guidelines set forth in article II of this chapter, the criteria set forth in subsection (a)(2) of this section have or have not been satisfied.
- (3) In addition to adopting a master concept plan for the planned development, the town council may adopt such special conditions as are necessary to address unique aspects of the subject property in the interest of protecting the public health, safety, and welfare. Should any recommended special condition be found to be insufficient, the town council may substitute its own language for such special condition in the final resolution.
- (4) Should a schedule of deviations from other provisions of this chapter (see §§ 34-212(6) and 34-932(b)) be a part of the planned development application, the town council may approve, approve with modification, or reject the entire schedule or specific items based upon their finding that for each item:
  - a. Each item enhances the achievement of the objectives of the planned development; and
  - b. The general intent of this chapter to protect the public health, safety, and welfare will be preserved and promoted;
  - c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
  - d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.
- (5) If the town council denies or modifies any requested use(s), deviations(s), or other information shown on the master concept plan, a revised master concept plan must be submitted to the director reflecting the substance of the approved resolution prior to execution of the resolution. Legible copies of

the revised master concept plan must be provided in two sizes, 24 inches by 36 inches and 11 inches by 17 inches in size.

- (6) No development orders may be issued until the approved resolution has been signed by proper town officials.

#### **Sec. 34-217. Effect of planned development zoning.**

##### **(a) *Compliance with applicable regulations.***

After the adoption of the master concept plan and the conditions and auxiliary documentation that govern it, any and all development and subsequent use of land, water, and structures within any planned development shall be in compliance with the following, in order of precedence:

- (1) The Fort Myers Beach Comprehensive Plan.
- (2) This subdivision of the land development code.
- (3) The master concept plan and attendant conditions and auxiliary documentation.
- (4) Any applicable town development regulations in force at the time of submission of the application for a development order.
- (5) The general provisions of this chapter, unless otherwise excepted by an approved schedule of deviations.

##### **(b) *Applicability of development regulations.***

The master concept plan (see § 34-212(4)) is conceptual only, and development pursuant to the master concept plan is subject to all development regulations established to protect health, safety, and welfare in force at the time of submission of the application for a development order, except where deviations have been formally granted in accordance with § 34-932(b).

(c) The terms and conditions of the planned development zoning approval (other than the master concept plan as set forth in § 34-220) run with the land and remain effective in perpetuity or until a new zoning action is approved by the town council. All developments must remain in compliance with the terms and conditions of the zoning approval.

(d) If the town discovers noncompliance with the regulations or the master concept plan and its attachments, the town may withhold any permit, certificate, or license to construct, occupy, or use any part of the planned development. This will not

be construed to injure the rights of tenants of previously completed and properly occupied phases.

**Sec. 34-218. Binding nature of approval of master concept plan.**

All terms, conditions, safeguards, and stipulations made at the time of the approval of a master concept plan shall be binding upon the applicant or any successor in title or interest to all or part of the planned development. Departure from the approved plans or failure to comply with any requirement, condition, or safeguard shall constitute a violation of this chapter.

**Sec. 34-219. Administrative amendments to approved master concept plan.**

(a) Amendments to an approved master concept plan or its attendant documentation may be requested at any time during the development of or useful life of a planned development.

(b) Amendments that may be approved by the director include, in general, any change which does not increase height, density, or intensity (i.e., number of dwelling units, hotel units, or floor area), decrease buffers or open space, or add additional land uses. The director shall not approve any change which results in a reduction of total open space, buffering, landscaping, and preservation areas or which adversely impacts on surrounding land uses.

- (1) This authority is granted to the director to eliminate unnecessary processing delays for proposed changes that are:
  - a. substantially similar to the prior approval; and
  - b. in conformance with all town regulations and plans.
- (2) Decisions by the director pursuant to this subsection may be appealed only as follows:
  - a. Appeals will not be considered for any of the following requests:
    1. an increase in height, density, or intensity (i.e., number of dwelling units, guest units, or floor area), or
    2. an additional land use, or
    3. a variance or deviation from this code, or
    4. a substantial change from previously approved architectural drawings or master concept plan.

- b. The appeal must be filed and processed in accordance with § 34-86. In addition, the appellant must provide a list and map of surrounding property owners and one set of mailing labels in accordance with § 34-202(6) and (7), and shall pay a fee established in accordance with the provisions of § 34-53.
- c. The director shall provide notice of the public hearing where this appeal will be considered using the procedures in § 34-236.
- d. Upon considering an appeal, the town council may uphold or repeal the director's decision, or may modify that decision by removing, adding, or modifying any conditions of approval.

(c) All other requests for amendments to a master concept plan or its auxiliary documentation shall be treated procedurally as an amendment to the planned development, with application information specified by § 34-214 and public hearings in accordance with § 34-216.

**Sec. 34-220. Duration of rights conferred by adopted master concept plan.**

Master concept plans are subject to the following:

- (1) An approved master concept plan and its attendant documentation shall be deemed to be vacated unless the property owner obtains a development order for the first phase of the project within three years of the date of the original approval by the town council, consisting of no less than 20 percent of the lots, dwelling units, square footage, or other applicable measurements of intensity for the development in question unless a lesser percentage is approved by the town council.
- (2) Timeframes for approval of subsequent portions of the development may be governed by a phasing plan, which shall be included in the resolution rezoning the subject parcel. Phases may be defined by geographical areas, units of intensity, or any other units of measurement deemed appropriate by the town council. In the absence of a specific phasing plan in the resolution, subsequent phases must proceed as follows:
  - a. Within five years of the date of approval by the town council, the first phase must

- have been completed and a development order must have been obtained for the second phase, consisting of 50% of the project.
- b. Within eight years of the date of approval by the town council, the second phase must have been completed and a development order must have been obtained for the entire project.
- (3) Any phase for which a development order has not been obtained or for which development has not been completed by the time specified in the resolution shall be deemed vacated, along with all subsequent phases.
- (4) When any portion of a master concept plan is vacated pursuant to subsection (1), the vacated area will remain zoned planned development, but no additional development can occur or be approved until a new master concept plan is approved or the original master concept plan is extended, or until the property is rezoned by the town council.
- (5) Extensions of master concept plans may be granted as follows:
  - a. An approved master concept plan for a phase of or an entire planned development which has been or may be vacated due to a failure to proceed on the applicant's part may be extended by the town council for a period of no more than two years from the date of the extension based on the following findings of fact:
    - 1. The master concept plan is consistent with this code and the current Fort Myers Beach Comprehensive Plan, including, but not limited to, density, intensity, and concurrency requirements;
    - 2. The development shown by the master concept plan has not become incompatible with existing and proposed uses in the surrounding area as the result of development approvals issued after the original approval of the master concept plan; and
    - 3. The development shown by the master concept plan will not, by itself or in conjunction with other development, place an unreasonable burden on essential public facilities.
  - b. An application for an extension may be filed at any time up to one year after the

vacation of the master concept plan and must consist of the following:

- 1. A completed application form provided by the director;
- 2. The approved master concept plan;
- 3. The applicable zoning resolution;
- 4. A written statement describing how the criteria listed in subsection (4)a. above have been met; and
- 5. A fee, in accordance with an adopted administrative code.
- c. No more than two extensions may be granted for any development or phase thereof.
- (6) Phasing plans may be amended in accordance with § 34-214.

**Secs. 34-221--34-230. Reserved.**

**DIVISION 5.  
PUBLIC HEARINGS AND REVIEW**

**Sec. 34-231. Definitions.**

For purposes of this division only, certain terms are defined as follows:

*Continuance* means an action initiated by the applicant, staff, local planning agency, or the town council to postpone, to a later time or date, a public hearing after the notice of the public hearing has been submitted to the newspaper for publication as required in § 34-236.

*Deferral* means an action initiated by the applicant or staff to postpone, to a later time or date, a public hearing prior to the notice of the public hearing being submitted to the newspaper for publication.

**Sec. 34-232. Required hearings.**

**(a) *Amendment or adoption of land use ordinances.***

- (1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, shall be enacted pursuant to the requirements set forth in F.S. § 166.041.

- (2) Prior to a final required hearing by the town council, the local planning agency shall review the amendment at a public hearing.

(b) **Owner-initiated requests.** Owner-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council.

(c) **Town-initiated requests.** Town-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and:

- (1) Applications covering less than 10 abutting acres of land will require a single public hearing before the town council.
- (2) Applications covering more than 10 abutting acres of land will require two public hearings before the town council in accordance with F.S. § 166.041.

#### **Sec. 34-233. Preliminary review and notice certification.**

(a) **Staff review.** The director will produce a written (staff) report summarizing each application and making a formal recommendation to the local planning agency and town council to be available about 7 days before the public hearing.

(b) **LPA review.** No application required under the provisions of this chapter to be reviewed by the local planning agency prior to review by the town council shall be heard for final consideration by the town council prior to receiving a substantive recommendation of the local planning agency. As used in this subsection, a motion to continue a matter by the local planning agency shall not be considered a substantive recommendation.

#### **Sec. 34-234. Public participation.**

(a) **Participation at public hearings.** At a public hearing before the local planning agency or town council, all persons shall be heard. However, the local planning agency and town council shall have the right to refuse to hear testimony which is irrelevant, repetitive, defamatory, or spurious, and may establish reasonable time limits on testimony.

(b) **Participation prior to public hearings.** When any person discusses a matter that is the subject of a pending quasi-judicial hearing with a member of the local planning agency or the town council, such member shall disclose the discussion at the public hearing in accordance with § 34-52(b)(2).

#### **Sec. 34-235. Deferral or continuance of public hearing.**

The following procedures and regulations for deferring or continuing a public hearing apply for the local planning agency and town council:

- (1) **Deferral.** A scheduled but not yet advertised public hearing may be deferred by the director or by the applicant as follows:
  - a. **Town-initiated deferral.** The director may defer a scheduled public hearing prior to advertising, if additional or corrected information is required to permit staff to properly or adequately review a requested application, provided that notice is mailed to the applicant, or his authorized representative, stating the reason for the deferral and what additional information is required to complete staff review.
  - b. **Applicant-initiated deferral.** An applicant may request a deferral of the public hearing if the request is in writing and received by the director prior to submitting notice of the hearing to the newspaper for publication.
  - c. **Fee.** There shall be no additional fee for either a town-initiated or applicant-initiated deferral. However, the applicant must obtain corrected zoning notice posters and post the signs on-site.
- (2) **Continuance.** A scheduled, advertised public hearing may be continued by the town or by the applicant as follows:
  - a. **Town-initiated continuance.**
    1. The local planning agency or town council, upon staff request or upon its own initiative, may continue a public hearing when it is necessary to require additional information, public testimony, or time to render an appropriate recommendation.
    2. The hearing shall be continued to a date certain, and the local planning agency or town council shall continue its consideration on the hearing matter on that date certain. Any hearing not

continued to a date certain is deemed to be denied without prejudice.

3. There shall be no limitations on the number of town-initiated continuances.
  4. The town shall bear all renotification costs of any town-initiated continuance.
- b. *Applicant-initiated continuance.*
1. The applicant, or his duly authorized agent, shall submit the request in writing to, and the request shall be received by, the town manager at least one day prior to the advertised hearing date, or the applicant or his duly authorized agent shall appear before the local planning agency or town council at the beginning of its scheduled agenda and orally request the continuance.
  2. The local planning agency or town council may either deny or grant the request for continuance.
    - i. If the request for continuance is denied, the hearing shall proceed in accordance with the published agenda.
    - ii. If the request for continuance is approved, the local planning agency or town council may set a date certain for hearing the application. Any hearing not continued to a date certain is deemed to be denied without prejudice.
  3. The applicant shall be entitled to one continuance before the local planning agency and one continuance before the town council as a matter of right. Each body shall have the authority to grant additional continuances upon a showing of good cause.
  4. A fee, in accordance with a fee schedule, shall be charged for any applicant-initiated continuance to cover the costs of renotification. The applicant must bear all renotification costs of an applicant-initiated continuance.
- c. *Unknown hearing dates.* Continuances may also be granted to unknown dates at the discretion of the local planning agency or town council. Such continuances shall be rescheduled by the director and shall be readvertised in the same manner as the originally scheduled hearing. If such a continuance was requested by an applicant,

the director may charge the applicant for additional costs of renotification.

### **Sec. 34-236. Notices.**

(a) ***Minimum required information.*** A notice of public hearing under this chapter shall contain the following minimum required information:

(1) ***Action proposed.***

a. ***Rezoning and developments of regional impact.*** All required notices shall indicate the existing zoning of the property, the proposed zoning, and the general location of the property by reference to common street names and addresses, with sufficient clarity so as to advise the public, but need not describe the proposed plans or details thereof, or the specific legal description of the property.

b. ***Special exceptions and variances.*** All required notices shall indicate the existing zoning of the property; the proposed use by special exception, or the requirement from which the variance is being requested and the actual degree of variance being requested; and the location of the property by reference to common street names and addresses, with sufficient clarity so as to advise the public, but need not describe the proposed plans or details thereof or the specific legal description of the property.

c. ***Appeals.*** The notice shall summarize the decision or action upon which the appeal is based with sufficient clarity so as to advise the public of the subject matter.

(2) ***Time and place of hearing.*** The notice shall specify the date, time and place that the public hearing will be held by the local planning agency or the town council.

(3) ***Public availability of information.*** The notice shall indicate where copies of the proposed amendment may be obtained or reviewed, or where the application for public hearing may be reviewed.

(4) ***Location of record of notice.*** A copy of such notice shall be kept available for public inspection during the regular business hours at town hall and at the director's office.

(b) ***Method of providing notice.*** Notices of hearings before the local planning agency and the town council shall be provided in accordance with applicable statutes and subsection (a) of this section.



(c) **Mailed notices.** The list and map of surrounding property owners required by § 34-202(a)(6) and (a)(7) is for the purpose of mailing notice to property owners within 500 feet of the property described. The notice is a courtesy only and is not jurisdictional. Accordingly, the failure to mail or to timely mail such notice, or failure of any affected property owners to receive mailed notice, will not constitute a defect in notice or bar the public hearing as scheduled.

**Secs. 34-237--34-264 Reserved.**

**DIVISION 6. INTERPRETATIONS,  
ENFORCEMENT, AND SPECIAL  
ADMINISTRATIVE ACTIONS**

**Sec. 34-265. Requests for interpretation of this code.**

Where a question arises as to the meaning or intent of a section or subsection of this code, a written request stating the area of concern and the explicit interpretation requested shall be submitted on forms provided by the director.

- (1) The director may render decisions of an administrative nature, such as but not limited to:
  - a. Proper zoning classification for a use not specifically addressed; and
  - b. Procedures to follow in unusual circumstances.
- (2) Interpretations which, in the opinion of the director, involve policy or legislative intent issues shall be placed on the agenda of the town council for its consideration (see § 34-90).

**Sec. 34-266. Enforcement.**

The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this chapter.

**Sec. 34-267. Forced relocation of businesses.**

(a) The director is authorized to permit proposed uses that are not permitted on a subject parcel for a period of not more than 180 days under the following circumstances:

- (1) The property owner, contract purchaser, or other authorized person has filed an application for a rezoning or a special exception for the subject parcel that would, if approved, make the requested use a permitted use;
- (2) The requested rezoning or special exception, in the opinion of the director, is clearly compatible with the neighboring uses and zoning and is consistent with the Fort Myers Beach Comprehensive Plan;
- (3) The proposed use of the property is a business that is being relocated due to the town's economic development or redevelopment efforts or as the result of threatened or ongoing condemnation proceedings;
- (4) No new principal structures are to be constructed on the subject property; and
- (5) The applicant agrees in writing that the proposed use will cease within 180 days of the date of the administrative approval unless the town council has rendered a final decision approving the requested rezoning or special exception. Upon execution, the agreement shall be recorded in the public records of the county.

(b) Decisions by the director pursuant to this section are discretionary and may not be appealed pursuant to § 34-86.

(c) The director may extend the effective date of the approval up to an additional 90 days upon good cause shown.

(d) No approval issued pursuant to this section shall excuse any property owner from compliance with any town regulation except the list of permitted uses in the zoning district in question.

**Sec. 34-268. Administrative setback variances.**

(a) Upon written request using a form prepared by the director, the director is authorized to modify the setbacks in §§ 34-638, 34-1174–34-1176, and 34-1744 of this chapter under the following circumstances:

- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific

setback so long as the remodeling or addition will not result in:

- a. An increase in the height of the structure;  
or
  - b. A further diminution of the setback. The director may approve bay windows, chimneys, and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
- (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure.
  - (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into an existing dwelling unit.
  - (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors in setbacks at the time of construction.
  - (5) Street, rear, or side setbacks may be modified for a residential lot with an unusual shape or orientation where, for instance, side and rear setbacks should be reversed.
  - (6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.
  - (7) Requirements for large satellite dishes may be modified as provided in § 34-1175(a)(6).

(b) The director, prior to approving the modifications, must make the following findings of fact:

- (1) There are no apparent deleterious effects upon the adjoining property owners;
- (2) The modifications will not have an adverse impact on the public health, safety, and welfare; and
- (3) The modifications will be the minimum required.

(c) Decisions by the director pursuant to this section are discretionary and may not be appealed in accordance with § 34-86.

**Secs. 34-269--34-610. Reserved.**

## Mapping of Zoning Districts

### ARTICLE III. ZONING DISTRICT REGULATIONS

#### DIVISION 1. MAPPING OF ZONING DISTRICTS

##### Sec. 34-611. Zoning districts established.

Land and water within Town of Fort Myers Beach is divided into zoning districts as set forth in this article in order to classify, regulate, and restrict the location of buildings erected or structurally altered for specific uses, to regulate the use of land, to regulate and limit the height and bulk of buildings hereafter erected or structurally altered, to regulate and determine the area of yards and other open space about buildings, to regulate the intensity of land use, and to promote the orderly growth of the town, in compliance with the goals, objectives and policies set forth in the Fort Myers Beach Comprehensive Plan.

##### Sec. 34-612. Types and general purpose of districts.

There are three basic types of zoning districts provided for in this article: conventional zoning districts, redevelopment districts, and planned development (PD) districts. The general purpose of each type of zoning district is to implement the goals, objectives, and policies of the Fort Myers Beach Comprehensive Plan, as well as to provide protection to the public health, safety, and welfare through the regulation of land use.

- (1) **Conventional districts.** Conventional zoning districts are districts within which land use is controlled primarily through the regulation of the height and bulk of buildings and structures, the minimum area and dimensions of lots, and setback requirements. Use regulations for the conventional districts are provided in Table 34-2 and other regulations are provided in Table 34-3 and division 4 of this article.
- (2) **Redevelopment districts.** Redevelopment districts differ from conventional zoning districts in that they implement specific

redevelopment concepts established in the Fort Myers Beach Comprehensive Plan. For each of the five redevelopment districts, use regulations are provided in Table 34-2 and the more specific property development regulations are provided in division 5 of this article.

- (3) **PD, planned development districts.** In certain circumstances, landowners may choose or be required to rezone their land to a planned development (PD) district. The purpose of the two planned development districts is to provide a degree of flexibility for a landowner to propose the development of land in a manner that differs from the specific provisions of this code. A planned development, once approved through the rezoning process, can only be developed in accordance with the master concept plan and special conditions that are contained in the resolution approving the planned development. Use and property development regulations for planned development districts are provided in division 6 of this article.

##### Sec. 34-613. Designation of district boundaries.

(a) Major revisions to this chapter were approved by the Town of Fort Myers Beach in 2003, including the establishment of new zoning districts and the assignment of all land in the town to one of these zoning districts.

- (1) The new zoning district assignments were shown on the interim zoning map contained in Exhibit A of Ordinance 03-03. The new zoning district assignments took effect on March 3, 2003, the date that Ordinance 03-03 was adopted. Previous approvals of variances, special exceptions, special permits, and other zoning actions that did not change zoning district boundaries were not shown on the interim zoning map due to its scale but were not affected by the adoption of the interim zoning map. These approvals were still indicated on the current zoning maps that were being maintained for the town by Lee County.
- (2) On May 17, 2004, the town council approved Resolution 04-16 adopting a new official zoning map of the town as described in

## Mapping of Zoning Districts

§ 34-614 that reflected these new zoning districts and other zoning approvals that remained in effect, such as variances, special exceptions, and special permits.

- (3) Also on May 17, 2004, the town council approved Resolution 04-17 adopting a historic zoning map of the town as described in § 34-616.

(b) The boundaries of each zoning district as shown on the interim zoning map, the official zoning map as described in § 34-614, the current zoning map as described in § 34-615, and the historic zoning map as described in § 34-616 shall be as much a part of this chapter as if fully described in this chapter.

(c) There is no right to rely solely on the interim, official, current, or historic zoning maps to vest development or private rights. In addition to the zoning districts shown on these maps, development rights may be limited by other factors such as the Fort Myers Beach Comprehensive Plan; conditions on zoning resolutions for planned development districts, special exceptions, special permits, or variances; and the precise terms of prior administrative approvals.

### Sec. 34-614. Official zoning map.

(a) **Generally.** The official zoning map of the town consists of computer-generated maps which are adopted by the town council by resolution. The first official zoning map was adopted by the town council on May 17, 2004 through Resolution 04-16.

- (1) The first official zoning map reflected the new zoning district boundaries adopted in 2003 through the interim zoning map (see § 34-613) plus two additional zoning district boundary changes adopted by separate resolutions through April 1, 2004.
- (2) The first official zoning map also reflected approvals of variances, special exceptions, special permits, and similar approvals from the previous zoning map, which had been approved by Lee County Resolution 94-03-27 on March 16, 1994 and subsequently amended by incremental decisions by officials of Lee County and the

Town of Fort Myers Beach through April 1, 2004.

- (3) When adopting official zoning maps, the town council may delete from the previous maps references to past approvals that are believed to have expired or which have become obsolete due to changed regulations or conditions. However, the deletion of such approvals from the official zoning map does not affect any rights that landowners may have under explicit terms of this code (see § 34-616).

(b) **District boundaries.** The boundaries of each district shall be shown on the official zoning map, and the district symbols shall be used to designate each district.

(c) **Other boundaries.** The perimeter of legal descriptions affected by variances, special exceptions, planned developments, and similar approvals shall be noted with a symbol or key number referencing additional zoning information, which may include the nature of the action, the hearing date, and any special conditions that were imposed.

(d) **Mapping conventions.** For mapping purposes only, a boundary line may be drawn to the centerline of a street or body of water.

(e) **Errors.** If it is determined that an error exists in the official zoning map, the town council may adopt a correction to the error by resolution at an advertised public hearing.

(f) **Public availability.** The official zoning map shall be part of the public records of the town.

(g) **Records management.** The director shall retain a copy of the official zoning maps adopted under § 34-614 consistent with statutory record-keeping requirements.

## Mapping of Zoning Districts

### Sec. 34-615. Current zoning map.

(a) **Description.** The current zoning map of the town consists of computer-generated maps depicting the same information on the official zoning map as it has been subsequently modified by rezonings, zoning amendments, special exceptions, variances, administrative decisions, mapping corrections, etc. that have been entered into the computer data base since the most recent adoption of the official zoning maps. For purposes of this section, the term “mapping corrections” means corrections applied to the current zoning map to provide an accurate reflection of the legal description affected by a duly adopted zoning resolution.

(b) **Printed copies.** Printed copies of the current zoning map should contain the following statement: “This current zoning map represents the official zoning map plus all rezonings, special exceptions, variances, and administrative amendments approved as of (date).”

(c) **Public availability.** The current zoning map shall be part of the public records of the town and may be inspected at town hall or purchased from the Lee County Property Appraiser in downtown Fort Myers.

(d) **Changes.**

- (1) No changes or amendments to the official or current zoning maps shall be made except in compliance and conformity with all the procedures of this chapter, including the correction of errors resulting from clerical or drafting mistakes. Changes in district boundaries or other subject matter portrayed on the official zoning map shall be made promptly on copies of the current zoning map after official adoption of the amendment. All amendments and changes approved by the town council or other authorized bodies shall become effective at the end of the appeal period specified in article II of this chapter. The filing of an appeal stays the effectiveness of the change. If no appeal is filed the director shall forthwith authorize the approved changes to be made on copies of the current zoning map.

- (2) Changes to the current zoning map authorized by the town will be entered into the computer data base and then reflected on the current zoning map in the following manner:
  - a. The property affected by a zoning district change, special exception, variance, or other approval shall be noted with a symbol or key number referencing additional zoning information.
  - b. The additional zoning information may include the resolution number, any change of zoning district, the nature of any other action, the hearing date, and any special conditions that were imposed.

### Sec. 34-616. Historic zoning map.

A historic zoning map was approved by the town council through Resolution 04-17 on May 17, 2004. This historic zoning map reflects the zoning districts that applied to all properties immediately prior to the adoption of Ordinance 03-03 and all variances, special exceptions, special permits, and similar approvals that had been approved by Lee County or the Town of Fort Myers Beach prior to the adoption of Ordinance 03-03. This map provides a historic record of past zoning actions and prior zoning status that may affect the nonconforming status of certain properties within the town. This map also includes key numbers that are explained by detailed notes that provide a history of prior rezonings, variances, special exceptions, special permits, and similar approvals that had been approved before Ordinance 03-03 was adopted on March 3, 2003.

### Sec. 34-617. Rules for interpretation of district boundaries.

- (a) When uncertainty exists as to the boundaries of districts of the official or current zoning map, the following rules shall apply:
  - (1) *Boundaries following centerlines.* Boundaries indicated as approximately following the centerlines of streets or bodies of water shall be construed to follow such centerlines.
  - (2) *Boundaries following lot or tract lines.* Boundaries indicated as approximately following lot lines or tract lines shall be construed as following such lines.

## Mapping of Zoning Districts

- (3) *Boundaries following shorelines.* Boundaries indicated as approximately following the centerlines of water bodies shall be construed to follow such centerlines. In the event of change in the shoreline due to natural causes, land created through accretion shall automatically be classified as EC until and unless a zoning district change is applied for and approved in accordance with procedures set forth in this chapter.
- (4) *Vacated lands.* here a public road, street, alley, or other form of right-of-way is officially vacated, the regulations applicable to the property to which the vacated lands attach shall also apply to such vacated lands.
- (5) *Accreted lands.* Where land accretes through natural or artificial processes, except for incidental fill behind a seawall authorized by ch. 26 of this code, the accreted land shall be classified as EC unless reclassified by public hearing in accordance with this chapter.
- (6) *Uncertainties.* Where physical or cultural features existing on the ground are at variance with those shown on the official or current zoning map, or in case any other uncertainty exists as to the proper location of district boundaries, the director shall interpret the intent of the official or current zoning map as to the proper location of the district boundaries.

(b) When a parcel is split by two or more zoning districts, the property development regulations for the largest proportional district prevail. However, each portion of the parcel is limited to only the permitted uses allowed on that portion, plus their allowable accessory uses. Accessory uses including parking lots may not be placed on portions of parcels that do not contain the principal use to which they are incidental and subordinate. Docks, however, are governed by the regulations for the upland property to which they are attached. See also § 34-1174.

**Sec. 34-618. Reserved.**

### DIVISION 2. ALLOWABLE LAND USES IN EACH ZONING DISTRICT

#### **Sec. 34-619. The Fort Myers Beach Comprehensive Plan.**

(a) The Fort Myers Beach Comprehensive Plan is the document adopted by the town council in accordance with F.S. ch. 163 to guide and regulate all land development activities within the town (see § 1-11). All development orders (including rezonings), as defined in F.S. § 163.3164(7) shall be consistent with the goals, objectives, policies, and standards in this plan. Where there are apparent conflicts between this plan and any regulations in this code, this plan will prevail.

(b) The Fort Myers Beach Comprehensive Plan contains a future land use map which divides the town into eight distinct categories:

- (1) Low Density
- (2) Mixed Residential
- (3) Boulevard
- (4) Pedestrian Commercial
- (5) Marina
- (6) Recreation
- (7) Wetlands
- (8) Tidal Water

The future land use map also contains a Platted Overlay which is applied in certain locations in addition to one of these eight categories. All development must be consistent with the future land use map, the definitions of the land use categories in the text of the plan, and the remainder of the text of the Fort Myers Beach Comprehensive Plan.

(c) Some of the zoning districts in this article may describe uses, densities, or intensities that are not permitted in particular future land use map categories. Property may not be rezoned to a district that is inconsistent with the applicable future land use map category or with the remainder of the text of the Fort Myers Beach Comprehensive Plan.

## Mapping of Zoning Districts

### Sec. 34-620. Allowable uses of land generally.

(a) This division describes allowable land uses in the Town of Fort Myers Beach, most of which are defined in § 34-2, and then groups these uses with compatible uses having similar impacts. These “use groups and sub-groups” (see Table 34-1) are the basis for defining the allowable uses in the various zoning districts (see Table 34-2). Other regulations for individual zoning districts are contained in divisions 4, 5, and 6 of this article.

(b) The director is authorized to determine that some land uses that are not specifically described in this division are permitted in a particular zoning district based upon the expected impacts of the most similar uses described in this division and their assignment to the various districts.

(c) The director may determine that the expected impacts of a land use that is not specifically described in this division cannot safely be assumed to match another use described in this division. In such a case, the director shall require that a property be rezoned into a planned development zoning district (see division 6 of this article) before that land use may be permitted.

(d) In every case, the following land uses can only be permitted through approval of a suitable planned development zoning district:

- (1) *Boat dealers* (except as a marina accessory use)
- (2) *Building material sales*
- (3) *Continuing care facility* (see § 34-1414)
- (4) *Contractor’s shop*
- (5) *Contractor’s storage yard*
- (6) *Hospital*
- (7) *Parking garage* (see § 34-2015(2)c.)
- (8) *Storage, open* (except as a marina accessory use)
- (9) *Vehicle and equipment dealers*

(e) Planned development zoning districts are also required by the Fort Myers Beach Comprehensive Plan in the following situations:

- (1) For new or expanded commercial activities other than those permitted by the current zoning district for land in the Mixed

Residential category on the future land use map (see Policies 4-B-4 and 4-C-3).

- (2) For new or expanded commercial activities other than those permitted by the current zoning district for land in the Boulevard category on the future land use map (see Policies 4-B-5 and 4-C-3 and §§ 34-701–34-930).
- (3) For consideration of extra building height in certain circumstances (see Policy 4-C-4 and § 34-631(b)(5)).
- (4) For the transfer of residential and hotel/motel development rights from one parcel to another (see Policy 4-C-8 and § 34-632(6)).
- (5) For guest units that exceed the thresholds established in § 34-1803(a).
- (6) For pre-disaster buildback of buildings that exceed the current density or height limits (see Policy 4-E-1 and § 34-3237).

(f) In no case may a land use that is not permitted by the Fort Myers Beach Comprehensive Plan be approved within the town, even if requested through the planned development process. Examples of prohibited uses are:

- (1) New or expanded cruise ships and similar uses that draw large amounts of vehicular traffic (see Policy 4-B-7).
- (2) New or expanded industrial uses (see Policy 4-B-12.iv.), which includes boatyards, manufacturing, and processing and warehousing.
- (3) Development seaward of the 1978 coastal construction control line (see Policy 5-D-1.v.), except for minor structures as provided in § 34-1575.

(g) Other uses prohibited within the town are as follows:

- (1) New or expanded drive-through lanes for restaurants (as a result of town ordinance 00-13).
- (2) New or expanded mobile home subdivisions and parks (see §§ 34-1921–34-1922).
- (3) New or expanded recreational vehicle subdivisions and parks (see §§ 34-2351–34-2352).

## Mapping of Zoning Districts

### Sec. 34-621. Allowable uses of land described.

(a) **Applicability.** No land, body of water, or structure shall be used or permitted to be used and no structure shall hereafter be erected, constructed, moved, altered, or maintained in any conventional or redevelopment zoning district for any purpose other than as provided in Tables 34-1 and 34-2 and in accordance with the property development regulations tables set forth in this article for the zoning district in which the property is located, except as may be specifically provided for in article V of this chapter pertaining to nonconforming uses, or in § 34-620 pertaining to uses not specifically listed in Table 34-1.

- (1) All uses of land, water, and structures are subject to the Fort Myers Beach Comprehensive Plan and its future land use map, and therefore may not be permitted in all land use categories.
- (2) All uses of land, water, and structures are subject to the specific use and property development regulations set forth for the district in which located, as well as all general provisions and all applicable supplemental regulations set forth in this chapter. Except as may be specifically provided for elsewhere in this chapter, deviations from the property development regulations may only be granted in accordance with the procedures established in § 34-932(b) for deviations in planned development zoning districts and in § 34-87 for variances in conventional and redevelopment zoning districts.
- (3) Allowable uses in planned development zoning districts shall be determined at the time of each rezoning in accordance with § 34-933.

(b) **Use tables.** Table 34-1 of this article lists specific uses followed by a symbol indicating whether the use is permitted by right (P), special exception (SE), administrative approval (AA), existing only (EO), or temporary use permit (TP). In all instances, unless specifically noted to the contrary, the symbols used in the use regulations tables shall have the following meaning:

**AA** *Administrative approval required.* The director has the authority to approve the use when in compliance with the referenced sections of this code.

**EO** *Existing only.* The use is permitted only if it that use lawfully existed on the same property on August 1, 1986. Such lawfully existing use shall have the same rights as a permitted use and may be expanded or reconstructed on the same parcel in accordance with all applicable regulations.

**P** *Permitted.* The use is permitted by right when in compliance with all applicable regulations.

**SE** *Special exception required.* The town council may approve the use after public hearing upon a finding that the use is consistent with the standards set forth in § 34-88, as well as all other applicable regulations. The town council may place restrictions on the use as a condition of approval.

**TP** *Temporary use permit.* The use may be granted a temporary use permit in accordance with §§ 34-3041 and 34-3050.

**AA/ SE** The use is permissible either through administrative approval or special exception, subject to the regulations set forth in the specified section (for example, in § 34-1264(a)).

**EO/ SE** Lawfully existing uses are permitted, but new uses are permissible only by special exception.

**(I)** Parenthesized number. The use is limited as set forth in the referenced footnote.



## Mapping of Zoning Districts

### Sec. 34-622. Uses groups and sub-groups.

(a) Allowable land uses are assigned by Table 34-1 to one of six use groups:

- (1) **Residential**
- (2) **Lodging**
- (3) **Office**
- (4) **Retail**
- (5) **Marine**
- (6) **Civic**

(b) Within each use group, Table 34-1 also assigns each allowable land use to one of three sub-groups:

- (1) **R** -Restricted
- (2) **L** -Limited (which includes all R uses)
- (3) **O** -Open (which includes all R and L uses)

(c) Within each use sub-group, uses are divided into two categories:

- (1) **Principal uses** are the primary purposes for which land is being used. Allowable principal uses are listed first.
- (2) **Accessory uses** are allowable only in conjunction with an allowable principal use, and only when the accessory use is incidental and subordinate to the principal use.

(d) Table 34-2 assigns these use sub-groups to the zoning districts provided by this code. However, uses in planned development zoning districts are further restricted in accordance with § 34-933.

(e) To determine the allowable land uses on a particular lot:

- (1) First, consult the zoning map to determine the lot's current zoning district (see division 1 of this article).
- (2) Consult Table 34-2 to determine which use sub-groups are allowable in that zoning district.
- (3) Consult Table 34-1 to determine which individual land uses can be placed in each allowable sub-group. Note that the sub-groups are cumulative, with all Restricted uses incorporated into Limited, and all Restricted and Limited uses incorporated into Open.
- (4) See § 34-2 for definitions of the individual land uses.

(f) To determine which zoning districts will permit a specific land use:

- (1) First, consult the definitions in § 34-2 to determine the appropriate terminology to describe the specific land use.
- (2) Consult Table 34-1 to determine which use sub-group (or sub-groups) include the desired land use.
- (3) Consult Table 34-2 to determine which zoning districts allow that use sub-group.
- (4) Consult the zoning map to determine which land has been assigned to those zoning districts.

### Sec. 34-623–34-630. Reserved.

**Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p.1 of 2)**

	<i>Residential</i>		<i>Lodging</i>		<i>Office</i>		
<b>Restricted</b>  Ⓜ	Community residential home	P	Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391–2410 for rules and exceptions)	P	AS ACCESSORY USES:  Home occupation (no outside help) P  Home occupation (with outside help) A	<b>Restricted</b>  Ⓜ	
	Dwelling unit, single-family	P					
	Home care facility	P					
	AS ACCESSORY USES:						
	Accessory apartment ( <i>I</i> ) (see § 34-1177)	SE					
	Accessory apartment (see § 34-1178)	EO					
	Residential accessory uses	P					
	Temporary mobile home (§ 34-3046)	TP					
<b>Limited</b>  (plus R uses) Ⓟ	Dwelling unit: two-family ( <i>I</i> ) live/work (see § 34-1773)	P SE	Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391–2410 for rules)	P	AS ACCESSORY USES:  Administrative office P	<b>Limited</b>  (plus R uses) Ⓟ	
	Mobile home or RV park (VILLAGE district only, as restricted in § 34-694)	EO					
			Bed-and-breakfast inn (see § 34-1801)	SE			
	AS ACCESSORY USES:						
	Accessory apartment ( <i>I</i> ) (see § 34-1177)	P	On-premises consumption of alcoholic beverages (see division 5 of article IV)	AA/ SE			
<b>Open</b>  (plus R & L uses) Ⓞ	Assisted living facility (see § 34-1411)	P	Bed-and-breakfast inn (see § 34-1801)	P	Automobile rental SE	<b>Open</b>  (plus R & L uses) Ⓞ	
	Dwelling unit: multiple-family live/work (see § 34-1773)	P P	Hotel/motel (see § 34-1801)	P	Health care facility P		
			Rental of any permitted dwelling unit for periods of one day or longer	P	Offices, general or medical P		
	Rooming house	P			Personal services P		
	Timeshare units (provided these units qualify as dwelling units and meet residential density levels in § 34-632)	P	Resorts	P	Wholesale establishment SE		
			Timeshare units	P			
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:		
	Golf course	EO	Resort accessory uses	P	Commercial accessory uses P		
	Recreation facility: private on-site private off-site	P SE	Personal services	P	Drive-through, Type 1 (2) P		
			Subordinate commercial uses (see § 34-3021)	P	Subordinate commercial uses (see § 34-3021) P		
	Subordinate commercial uses (see § 34-3021)	P					

(1) Provided density complies with the Fort Myers Beach Comprehensive Plan (see § 34-632).

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

**Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p. 2 of 2)**

	<i><b>Retail</b></i>	<i><b>Marine</b></i>	<i><b>Civic</b></i>	
<b>Restricted</b> (R)	AS ACCESSORY USES: ATM P	AS ACCESSORY USES: Dock (for sole use by occupants of principal use) P	Beach or bay access P Essential services (see § 34-1612(a)) P Hidden path P Park, neighborhood P AS ACCESSORY USES: Family day care home P	<b>Restricted</b> (R)
<b>Limited</b> (plus R uses) (L)	Dwelling unit: work/live (see § 34-1774) SE Membership organization SE Recreation facilities, commercial SE Parking lot, seasonal (see § 34-2022) TP Temporary uses (see §§ 34-3041–3050) SE AS ACCESSORY USES: On-premises consumption of alcoholic beverages (see §§ 34-1261–1290) AA/SE	Dock (for use by water taxi or water shuttle) P Marina EO/SE Parasailing operations office SE Personal watercraft operations office SE Rental of beach furniture P AS ACCESSORY USES: Dwelling unit, caretaker P Dock (may be leased to non-occupants of principal use) P	Communication tower (see § 34-1441–1550) SE Day care center, adult or child SE Essential service building (see § 34-1612(b)) SE Essential service equipment P Recreation facility: private off-site SE public P Transit terminal SE AS ACCESSORY USES: Dwelling unit, caretaker P Restaurant, accessory to private rec. facilities only SE	<b>Limited</b> (plus R uses) (L)
<b>Open</b> (plus R & L uses) (O)	Automobile repair SE Bar or cocktail lounge AA/SE Car wash SE Dwelling unit: work/live (see § 34-1774) P Laundromat P Mini-warehouse SE Parking lot, shared permanent (34-2015(2)b.) SE Personal services P Restaurant (2) P Retail store, small P Retail store, large SE AS ACCESSORY USES: Commercial accessory uses P Drive-through: (2) Type 1 P Type 2 SE Automobile fuel pumps (2) SE	Boat dealer P Marina P AS ACCESSORY USES: Marina accessory uses P	Cultural facility SE Day care center, adult or child P Park, community or regional P Parking lot, shared permanent SE Place of worship P Religious facility SE School (see § 34-2381–2383) P Theater SE AS ACCESSORY USES: Helistop SE Restaurant, accessory only to public recreation facilities P Subordinate commercial uses (see § 34-3021) P	<b>Open</b> (plus R & L uses) (O)

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

**Table 34-2 — Use Sub-Groups Permitted in Each Zoning District <sup>1</sup>**

	<i>Residential</i>	<i>Lodging</i>	<i>Office</i>	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>
	Use Groups and Sub-Groups (Restricted, Limited, Open)					
<b>RS Residential Single-family</b>	(R)	(R)	(R)	—	(R)	(R)
<b>RC Residential Conservation</b>	(L)	(L)	(R)	—	(R)	(R)
<b>RM Residential Multifamily</b>	(O)	(L)	(L)	(R)	(R)	(L)
<b>CR Commercial Resort</b>	(O)	(O)	(O)	(L)	(L)	(L)
<b>CM Commercial Marina</b>	—	—	(L)	(L)	(O)	(L)
<b>CO Commercial Office</b>	(O)	(L)	(O)	(L)	(L)	(O)
<b>SANTOS</b>	(L)	(L)	(O)	(L)	(L)	(L)
<b>IN Institutional</b>	(L)	(L)	(L)	(R)	(L)	(O)
<b>CF Community Facilities</b>	(R)	(R)	(L)	(R)	(L)	(O)
<b>BB Bay Beach</b>	— see § 34-651(b) —					
<b>EC Environmentally Critical</b>	— see § 34-652(d) & (e) —					
<b>DOWNTOWN</b>	(O)	(O)	(O)	(O)	(L)	(O)
<b>SANTINI</b>	(O)	(O)	(O)	(O)	(O)	(O)
<b>VILLAGE</b>	(L) <sup>2</sup>	(L) <sup>2</sup>	(L) <sup>2</sup>	(L) <sup>2</sup>	—	(L)
<b>CB Commercial Boulevard</b>	(O)	(L)	(L) <sup>3</sup>	(L) <sup>3</sup>	(L)	(O)
<b>RPD Residential Planned Dev. <sup>4</sup></b>	(R)(L)(O)	(R)(L)	(R)(L)	(R)(L)	(R)(L)	(R)(L)
<b>CPD Commercial Planned Dev. <sup>4</sup></b>	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)

*Note 1: See Table 34-1 for a specific list of Use Groups (Residential, Lodging, Office, Retail, Marine, and Civic) and Sub-Groups of each (Restricted, Limited, and Open).*

*Note 2: See § 34-692(3) which provides a pre-approved redevelopment option for the VILLAGE district that can also permit residential, lodging, office, and retail uses in the Open Sub-Group under specified conditions.*

*Note 3: See § 34-702–703 for exceptions and limitations on new and expanded commercial uses.*

*Note 4: See § 34-933. The resolution approving a planned development zoning district (RPD or CPD) will specify which of the use groups or sub-groups enumerated in Table 34-1 will be permitted on that parcel. Note that some potential use sub-groups are not listed above for the RPD zoning district because they may not be approved in any RPD zoning resolution.*

# Property Development Regulations For All Zoning Districts

## DIVISION 3. EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS

### Sec. 34-631. Building heights.

(a) **Methods of measurement.** Maximum building heights specified in this code are measured in two ways, as shown in Figure 34-1-a. Both measurement methods apply to each building.

- (1) *Measured in stories*, the height includes enclosed or unenclosed space at ground level as the first story, provided it is six feet or more in height.
  - a. Space within a roofline that is entirely non-habitable shall not be considered to be a separate story, for example overhead space enclosed by a cathedral ceiling, cupola, or similar roof enclosure.
  - b. Any single story cannot exceed 16 feet in height, including structural members, except that the first story may be taller if required to comply with any regulation in this code.
- (2) *Measured in feet*, the height is the vertical distance between the base flood elevation and the top of the structural members that serve as the ceiling for the highest habitable story of the building.
  - a. Where ceilings are sloped, height is measured to the highest vertical point on a wall of the highest habitable story of the building.
  - b. For parking garages, height is measured to the top of the structural members of the

highest ceiling, or if parking is allowed on the roof level, to the highest point on the rooftop parking level.

- c. When determining maximum building heights only, base flood elevation (BFE) means the minimum required elevation for a property as established by the floodplain maps described in § 6-408, or the minimum 100-year storm elevation as established by the Florida Department of Environmental Protection for structures seaward of the 1991 coastal construction control line, whichever is higher for a particular property.
  - d. On July 31, 2006, FEMA released maps showing preliminary BFE increases that could become mandatory in 2007. Landowners who voluntarily meet the higher elevations shown on the preliminary FEMA maps may measure their building's height in feet from the higher elevation.
  - e. Landowners who choose to elevate up to three feet above the heights in subsections c. or d. above may increase their maximum building height by the same number of feet.
- (3) Specific height regulations are provided for each zoning district.
- a. For conventional zoning districts, see Table 34-3 in division 4 of this chapter.
  - b. For redevelopment zoning districts, see individual districts in division 5 of this chapter.
  - c. For planned development zoning districts, see division 6 of this chapter.

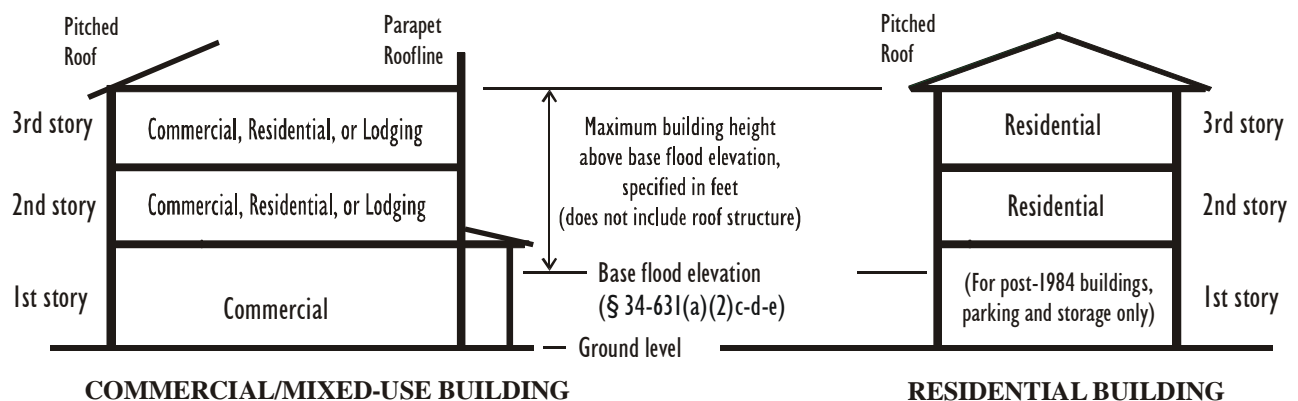


Figure 34-1-a

## Property Development Regulations For All Zoning Districts

(b) ***Exceptions to height regulations.***

- (1) Roof structures and parapet walls may exceed the height limit defined in any zoning district provided there is no habitable space inside the roof structure.
- (2) Non-habitable architectural appurtenances such as cupolas, clerestories, and steeples may also extend above the height limit if they do not exceed an area of 250 square feet. A habitable roofed tower up to 150 square feet, whether open-sided or enclosed, may also qualify as an acceptable architectural appurtenance and extend above the height limit provided it is roofed in a manner consistent with the design of the building. Decks do not qualify as architectural appurtenances for the purposes of this subsection. Any proposed appurtenance taller than an additional 15 feet or larger than the specified sizes would require a variance from this code.
- (3) Mechanical or structural appurtenances such as elevator and stairwell enclosures, air-conditioning equipment, and antennas may also extend above the height limit provided these appurtenances:
  - a. do not exceed 250 square feet per type; and
  - b. screening is provided as required by this code (see, for example, § 6-2(f) for rooftop mechanical equipment).
- (4) When properties are being rebuilt pursuant to the buildback regulations in § 34-3237 and 34-3238, specific height regulations in those sections may supersede the height regulations established for that property's zoning district.
- (5) In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that the height regulations in this chapter would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan,



*Roofed towers, Figure 34-1-b*

including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than the height limits in this chapter. In each case, the town shall balance the public benefits of the standard height limit against other public benefits that would result from the specific proposal.

- (6) For amateur radio antennas/towers, see § 34-1175. For communication towers and commercial antennas, see § 34-1441–1550).
- (c) ***Space at ground level.***
  - (1) Commercial space below the base flood elevation (at ground level) requires dry-floodproofing of the building (see §§ 6-401–474).
  - (2) Space below the base flood elevation in new residential buildings may be used only for parking and limited storage (see §§ 6-401–474).

## Property Development Regulations For All Zoning Districts

### Sec. 34-632. Density.

Residential density cannot exceed the maximum levels established in the Fort Myers Beach Comprehensive Plan. Additional dwelling units are not allowed in the “Marina” or “Tidal Waters” categories on the Comprehensive Plan’s future land use map; live-aboards are permitted in accordance with § 34-1861.

- (1) **Formula for computing density.** The maximum number of dwelling units allowed on a parcel of land is computed by taking the maximum number of dwelling units per acre the comprehensive plan allows on that parcel and multiplying it by the site’s lot area in acres, with the result rounded down to the nearest whole number (except as provided in subsection (3) below).
- (2) **Determining lot area.** For purposes of this section, a site’s lot area includes the gross acreage within the site’s private property line, minus wetlands, canals or other water bodies that extend beyond the site, minus all primarily commercial and other non-residential land, and minus any land designated “Recreation” on the Comprehensive Plan’s future land use map. For any site with wetlands or land designated “Recreation,” the maximum number of dwelling units shall be increased by one unit per 20 acres of such land.
- (3) **Existing subdivisions.** In existing subdivisions where lots are smaller than 15,000 square feet each:
  - a. Residential densities may be computed based on the actual lot size plus one-half the width of adjoining streets and water bodies, but in no case may more than 35 feet be counted as the allowance for one-half of an adjoining water body.
  - b. Computed densities greater than 1.5 DU/acre may be rounded up to two dwelling units where two-family and multifamily dwelling units are permitted.
  - c. This method for determining densities cannot be used for:
    1. Three or more lots that are being combined into a development project; or
    2. Any lot that was created after December 31, 1995, as described in § 34-3272.
- (4) **Mixed-use buildings.** Residential densities may be computed without deleting any acreage for commercial uses that are located on other floors of mixed-use buildings. However, any acreage used primarily for commercial purposes cannot be included in computations of residential density.
- (5) **Adjustments to density computations.** The following rules shall apply when measuring density for living units or guest units that may not also qualify as dwelling units:
  - a. When permitted on a property, certain other land uses such as assisted living facilities and hotels/motels are limited by using equivalency factors between those uses and dwelling units, such as provided in §§ 34-1415 and 34-1803.
  - b. For density purposes, each living unit shall count as one dwelling unit except where this code explicitly provides a different measure for measuring density (see, for example, § 34-1178(d) regarding accessory apartments in owner-occupied homes).
  - c. Lock-off accommodations in multiple-family buildings and timeshare units are living units and are calculated as separate dwelling units for density purposes.
  - d. Live-aboards are considered to be living units but not dwelling units as defined by the Fort Myers Beach Comprehensive Plan. Where live-aboards are permitted in accordance with § 34-1861, they are not subject to residential density computations.
- (6) **Density transfers.** The Town Council may, at its discretion, permit the transfer of residential and hotel/motel development rights from one parcel to another if the following conditions established by Policy 4-C-8 of the comprehensive plan are met:
  - a. the transfer is clearly in the public interest, as determined by the Town Council;
  - b. the parcels affected by the transfer are in close proximity to each other;
  - c. the density of residential or hotel/motel units being transferred is based upon

## Property Development Regulations For All Zoning Districts

- allowable density levels in the comprehensive plan category from which the density is being transferred;
- d. the transfer is approved through the planned development rezoning process; and
- e. binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.

### **Sec. 34-633. Intensity and floor area ratios.**

Another measure of building intensity used in this code is the floor area ratio (FAR), which means the gross floor area of all buildings on a site divided by the site's lot area.

- (1) For purposes of this section, gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is 6 feet or more in height, plus all stories of covered parking, but not including any area whose roof is screened rather than solid (such as swimming pool enclosures).
- (2) For purposes of this section, a site's lot area includes the gross square footage within the site's private property line, minus wetlands, canals or other water bodies, and minus any land designated "Recreation" on the Comprehensive Plan's future land use map.

### **Sec. 34-634. Intensity and building coverage.**

Another measure of building intensity used in this code is building coverage, which means the horizontal area of all principal and accessory buildings on a site divided by the site's lot area.

- (1) For purposes of this section, horizontal area means the area within the surrounding exterior walls (whether the walls are solid or screened). The term "horizontal area" does not include any area occupied by unroofed structures such as driveways, sidewalks, patios, outside stairways, or open swimming pools, and does not include any area whose roof is screened rather than solid such as swimming pool enclosures.

- (2) For purposes of this section, a site's lot area includes the gross square footage within the site's private property line, minus wetlands, canals, or other water bodies, and minus any land designated "Recreation" on the Comprehensive Plan's future land use map.

### **Sec. 34-635. Commercial design standards.**

Except where this code specifically provides otherwise, the commercial design standards (see § 34-991–1010) apply to all commercial and mixed-use buildings or portions thereof that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405, on properties that are zoned in any of the following zoning districts:

- (1) SANTOS (§ 34-648);
- (2) DOWNTOWN (§ 34-671–680);
- (3) SANTINI (§ 34-681–690);
- (4) VILLAGE (§ 34-691–700);
- (5) CB (§ 34-701–710); and
- (6) CPD (commercial planned development) (§ 34-951–960).



## Property Development Regulations For All Zoning Districts

### Sec. 34-636. Parcelization or subdivision of existing buildings.\*

(a) **Two-family building.** All of the following requirements must be satisfied before the required limited review development order can be issued for further parcelization or subdivision of land in the RC zoning district into separate lots and/or separating two lawfully existing dwelling units into individual parcels:

- (1) The building cannot exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land and the lots resulting from the subdivision must each conform to the dimensional regulations for lot size in the RC zoning district (see Table 34-3).
- (2) Existing buildings do not need to be brought into compliance with floodplain requirements for new development, as provided in article IV of ch. 6 of this code.
- (3) The entire building must meet the coastal construction requirements that apply to new development, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with at least 1-hour fire resistance rating as defined by the Florida Building Code.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(b) **Multiple-family building.** All of the following requirements must be satisfied before the required limited review development order can be issued for further parcelization or subdivision of lawfully existing dwelling units:

- (1) The number of dwelling units in the existing building may exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, but may not exceed the number of lawfully permitted units. The burden to demonstrate the lawful nature of the units is on the applicant. If the number of dwelling units exceeds the density

limitations of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, the interior square footage of the building, as defined in §34-3238(2)d.1., may not be increased, but may be exchanged on a square-foot for square-foot basis to provide larger but fewer dwelling units within the same interior area.

- (2) Existing buildings do not need to be brought into compliance with floodplain requirements for new development as provided in article IV of ch. 6 of this code. Owners of an existing building that cannot comply with these requirements may seek to replace the building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.
- (3) The entire building must meet the coastal construction requirements that apply to new development, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with at least 1-hour fire resistance rating as defined by the Florida Building Code.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(c) **Hotels/motels.** The special parcelization requirements in this section that apply to two-family and multiple-family buildings do not apply to hotels/motels that are being parcelized.

\* **EDITOR'S NOTE:** Ordinance No. 07-04, which amended § 34-636, stated the following:

**SECTION 3. PARCELIZATION.** Anything in Chapter 34 of the Land Development Code notwithstanding, a change in the nature or form of the ownership of any property or properties, within any zoning or land use category, shall not in and of itself constitute parcelization of such property or properties or development thereof necessitating the approval thereof pursuant to the provisions of the Land Development Code. The provisions hereof shall supersede all provisions of Charter 34 of the Land Development Code inconsistent herewith.

## Property Development Regulations For All Zoning Districts

### Sec. 34-637. Minimum lot sizes.

(a) All lot area, width, and depth dimensions in this code are mandatory minimums for newly created lots.

- (1) Minimum lot areas, width, and depths are specified for various zoning districts.
  - a. For all conventional zoning districts, see Table 34-3.
  - b. For redevelopment zoning districts, as described for the individual districts in division 5 of this chapter.
  - c. For PD districts, see §§ 34-943 and 34-953.
- (2) Definitions and methods of measuring lot widths and depths are provided in § 34-2.

(b) Where two or more dwelling units or guest units are proposed for a single lot or combination of lots, the lot(s) must also be large enough to comply with the density limitations of the Fort Myers Beach Comprehensive Plan, as computed in accordance with § 34-632.

(c) Division 4 of article V of this chapter defines nonconforming lots, which may be smaller than the minimum lot areas, widths, and/or depths specified in this code.

- (1) Certain nonconforming *residential* lots are subject to the smaller minimum lot areas, widths, and depths that are found in § 34-3274.
- (2) Certain nonconforming *commercial* lots are subject to the smaller minimum lot areas, widths, and depths that are found in § 34-3277.

(d) Essential services and essential service equipment shall not be required to meet the minimum required lot dimensions for the district wherein located (see § 34-1617).

### Sec. 34-638. Minimum setbacks.

(a) **Generally.** Most zoning districts require minimum setbacks between all buildings and structures and the street, the side lot line, the rear lot line, and any water body.

- (1) Setbacks are minimum horizontal distances between a property line and the nearest point of all structures that ensure a minimum area without buildings. Detailed definitions are provided under “setback” in § 34-2.
  - a. Where an unusual lot configuration or orientation makes it unclear which property lines are street, side, or rear lot lines, the director will establish street, side, and rear lot lines for setback purposes after taking into account existing buildings on the same block as well as the intent of this code. Where access is provided by a shared driveway rather than a street, the director may determine that no street setback applies to that lot.
  - b. Once established through this process, the same setbacks will be applied by the director to other lots on that block.
- (2) There are two types of side setbacks:
  - a. *Side setbacks – waterfront lots.* Larger side setbacks are required for waterfront lots, defined as lots that immediately adjoin a tidally influenced body of water, whether artificial or natural (see definitions in § 34-2).
  - b. *Side setbacks – non-waterfront lots.* Smaller side setbacks are required for all other lots.
- (3) The distinction between street setback lines and build-to lines is explained in § 34-662.
- (4) Certain exceptions to minimum setbacks are provided in subsection (d) below.

(b) **Where to find minimum setback dimensions.** Minimum setback dimensions are specified as follows:

- (1) *For principal buildings:*
  - a. For all conventional zoning districts, see Table 34-3.
  - b. For redevelopment zoning districts, as described for the individual districts in division 5 of this chapter.
  - c. For RPD districts, see § 34-943.

## Property Development Regulations For All Zoning Districts

- d. For CPD districts, see § 34-953.
- (2) *For accessory buildings*, see §§ 34-1174–1176.

(c) ***Additional wetlands buffers.*** New development must maintain a 75-foot separation between wetlands and buildings or other impervious surfaces, in accordance with Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan.

- (1) This requirement does not apply to lawfully existing subdivided lots
- (2) This requirement also does not apply to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see ch. 15 of the Fort Myers Beach Comprehensive Plan for details).

(d) ***Exceptions to setback dimensions.*** In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in § 34-991–1010.

- (1) ***Exceptions to all setbacks.***
  - a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.
  - b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.
  - c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.
  - d. *Awnings and canopies.*
    - 1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.

- 2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.

- e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum setbacks for the district wherein located (see § 34-1617).
- f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family buildings that are being subdivided must be separated by not less than 1-hour fire resistance.
- g. *Mechanical equipment.* Mechanical equipment such as air conditioners may encroach up to three feet into rear and water body setbacks but must meet the same street and side setbacks as the building it serves. These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.

(2) ***Exceptions to street setbacks.***

Certain structures are exempt from the street setback requirements as follows. See also § 34-1174.

- a. ***Build-to lines.*** Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e)).

## Property Development Regulations For All Zoning Districts

- b. ***Porches, balconies, and stoops.*** Porches, balconies, and stoops may extend up to 10 feet into the street setback zone of residential buildings, provided that:
    - 1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony, or stoop; and
    - 2. No portion of a porch or balcony and no walls or screened areas may be closer than 10 feet to the edge of any street right-of-way or street easement.
  - c. ***Mail and newspaper delivery boxes.*** Mail and newspaper delivery boxes may be placed in accordance with U.S. Postal Service regulations; however, the support for a mail or newspaper delivery box must be of a suitable breakaway or yielding design, and any mail or newspaper delivery box placed in an unsafe or hazardous location can be removed by the government agency with jurisdiction over the right-of-way at the property owner's expense.
  - d. ***Bus shelters, bus stop benches, and bicycle racks.*** Bus shelters, bus stop benches, and bicycle racks may be located in any district without regard for minimum setbacks, provided the location of the structure is approved by the town manager. No advertising is permitted on bus stop benches.
  - e. ***Telephone booths.*** Telephone booths and pay telephone stations may be located in any zoning district that permits multifamily or commercial uses without regard for minimum setbacks, provided that the location shall be approved by the director.
- (3) ***Water body setbacks.***
    - a. ***Gulf of Mexico.*** Except as provided in this section or elsewhere in this code, no building or structure shall be placed closer to the Gulf of Mexico than set forth in ch. 6, articles III and IV, or 50 feet from mean high water, whichever is the most restrictive. See also special regulations for the EC zoning district in § 34-652 and the coastal zone restrictions in § 34-1575.
    - b. ***Other bodies of water.*** Except as provided in this section or elsewhere in this chapter, no building or structure shall be placed closer than 25 feet to a canal or to a bay or other water body. For purposes of measuring setbacks from a canal, bay, or other body of water, the following will be used:
      - 1. If the body of water is subject to tidal changes and the property does not have a seawall, the setback will be measured from the mean high water line.
      - 2. If the body of water is not subject to tidal changes and the property does not have a seawall, the setback will be measured from the control elevation of the body of water if known, or from the ordinary high water line if unknown.
      - 3. If the property has a seawall, the setback will be measured from the seaward side of the seawall, not including the seawall cap.
    - c. ***Exceptions for certain accessory structures.*** Certain accessory buildings and structures may be permitted closer to a body of water as follows:
      - 1. ***Fences and walls.*** See division 17 of this article.
      - 2. ***Shoreline structures.*** See § 34-1863 and ch. 26.
      - 3. ***Nonroofed structures.*** Swimming pools, tennis courts, patios, decks, and other nonroofed accessory structures or facilities which are not enclosed, except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade to the top of the enclosure,

## Property Development Regulations For All Zoning Districts

shall be permitted up to but not closer than:

- a- Five feet from a seawalled canal or seawalled natural body of water;
- b- Ten feet from a nonseawalled artificial body of water; or
- c- Twenty-five feet from a nonseawalled natural body of water;

whichever is greater. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with the setbacks set forth in subsections (d)(3)a. and (d)(3)b. of this section.

#### 4. *Roofed structures.*

- a- Accessory structures with roofs intended to be impervious to weather and which are structurally built as part of the principal structure shall be required to comply with the setbacks set forth in subsections (a) and (b) of this section.
- b- Accessory structures with roofs intended to be impervious to weather and which are not structurally built as part of the principal structure may be permitted up to but not closer than 25 feet to a natural body of water, and ten feet to an artificial body of water.

#### (4) *Exceptions for certain nonconforming lots.*

- a. Certain nonconforming *residential* lots are subject to the modified side and rear setback requirements that are found in § 34-3273.
- b. Certain nonconforming *mobile home* lots in the VILLAGE zoning district are subject to the modified side and rear setback requirements that are found in § 34-694.
- c. Certain nonconforming *commercial* lots are subject to the modified side and rear setback requirements that are found in § 34-3277.

**Secs. 34-639--34-640. Reserved.**

## Property Development Regulations For All Zoning Districts

## Conventional Zoning Districts

### DIVISION 4. CONVENTIONAL ZONING DISTRICTS

#### **Sec. 34-641. General purpose.**

The purpose of conventional zoning districts is to control land use in a uniform way throughout each zoning district, with similar use and dimensional regulations applying to all parcels within that district. Article IV of this chapter also contains supplemental regulations that apply to multiple zoning districts.

#### **Sec. 34-642. RS (Residential Single-family) zoning district.**

(a) The purpose of the RS zoning district is to provide stable neighborhoods where single-family detached homes are the predominant land use.

(b) In the RS zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

#### **Sec. 34-643. RC (Residential Conservation) zoning district.**

(a) The purpose of the RC zoning district is to recognize certain older neighborhoods that had been zoned for duplex, multifamily, or mobile homes purposes prior to incorporation of the town. Some lots in this district are large enough to accommodate a second dwelling unit (see Table 34-3 and §§ 34-632, 34-1177, and 34-1178).

(b) In the RC zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

#### **Sec. 34-644. RM (Residential Multifamily) zoning district.**

(a) The purpose of the RM zoning district is to designate suitable locations for a wide variety of multifamily residences.

(b) In the RM zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

#### **Sec. 34-645. CR (Commercial Resort) zoning district.**

(a) The purpose of the CR zoning district is to designate suitable locations for motels, resorts, and related services.

(b) In the CR zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

#### **Sec. 34-646. CM (Commercial Marina) zoning district.**

(a) The purpose of the CM zoning district is to allow commercial marinas in suitable waterfront locations to provide boaters with access to the water and related services.

(b) In the CM zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

#### **Sec. 34-647. CO (Commercial Office) zoning district.**

(a) The purpose of the CO zoning district is to allow office uses on land that is visible to the traveling public or on land that can serve as a transition between commercial and residential uses.

(b) In the CO zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

#### **Sec. 34-648. SANTOS zoning district.**

(a) The purpose of the SANTOS zoning district is to allow a mixture of residential and low-intensity commercial uses that will separate the intense commercial uses along Estero Boulevard from the residential portions of the Venetian Gardens subdivision. This zoning district implements the recommendations of the Santos/Palermo Circle Planning Study (February, 1999) and Policy 4-C-11 of the Fort Myers Beach Comprehensive Plan.

(b) In the SANTOS zoning district, allowable uses are defined in Table 34-2 and property

## Conventional Zoning Districts

development regulations are contained in Table 34-3.

(c) In addition to these restrictions on allowable uses and dimensional requirements, the commercial design standards found in § 34-991–1010 apply to all commercial and mixed-use buildings or portions thereof that are being newly built and to “substantial improvements” to such buildings as defined in § 6-405.

### **Sec. 34-649. IN (Institutional) zoning district.**

(a) The purpose of the IN zoning district is to provide suitable regulations for churches, civic buildings, schools, and government buildings.

(b) In the IN zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

### **Sec. 34-650. CF (Community Facilities) zoning district.**

(a) The purpose of the CF zoning district is to provide suitable regulations for parks and nature preserves.

(b) In the CF zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

### **Sec. 34-651. BB (Bay Beach) zoning district.**

(a) The purpose of the BB zoning district is to implement the binding agreement that settled litigation over development rights in Bay Beach and to recognize prior rights granted for the construction and use of docks.

(b) Land uses in the BB zoning district shall conform to all requirements of the stipulated settlement agreement between Stardial Investments Company and the Town of Fort Myers Beach dated February 23, 2001, a copy of which is recorded in O.R. Book 3414, Pages 4775–4786, as amended in O.R. Book 3414, Pages 4787–4789, and including any future amendments to this agreement. Land uses in the BB zoning district must also conform to DRI development order #12-9394-124 regarding dock

construction that was issued by Lee County on December 5, 1994, notice of which is recorded in O.R. Book 2586, Pages 1851–1854.

- (1) Allowable land uses include those uses in lawful existence as of February 23, 2001, and those additional uses as defined in the settlement agreement and in the DRI development order.
- (2) Building size and placement shall be governed by the regulations in this code, including the property development regulations in the RM district, except where specifically superseded by terms of the settlement agreement.
- (3) Replacement buildings cannot exceed the height, square footage of floor and parking areas, and all other measurable parameters of the original buildings. See buildback regulations in § 34-3237–3238.

### **Sec. 34-652. EC (Environmentally Critical) zoning district.**

(a) *Purpose.* The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan, including:

- (1) Beaches that have been designated in the “Recreation” category on the future land use map, and.
- (2) Wetlands that have been correctly designated in the “Wetlands” category on the future land use map.

(b) *Intent.* The application of the EC district is intended to prevent a public harm by precluding the use of land for purposes for which it is unsuited in its natural state and which injures the rights of others or otherwise adversely affects a defined public interest.

(c) *Accretion.* Accretions of beaches or wetlands, whether by natural causes or through beach renourishment or artificial filling, will automatically be assigned to the EC zoning district.



## Conventional Zoning Districts

(d) *Permitted uses.* In the EC district, no land or water use shall be permitted by right except for those uses and developments permitted by the Fort Myers Beach Comprehensive Plan in wetlands, beaches, or critical wildlife habitats, as applicable, including:

- (1) Boating, with no motors permitted except electric trolling motors.
- (2) Fishing.
- (3) Removal of intrusive exotic species or diseased or dead trees, and pest control.
- (4) Hiking and nature study, including pedestrian boardwalks and dune crossovers.
- (5) Outdoor education, in keeping with the intent of the district.
- (6) Recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and active recreation that requires no permanent structures or alteration of the natural landscape (except as may be permitted by special exception (see § 6-366 and subsection (e) below). Any temporary structure used in conjunction with such uses must comply with all provisions of this code (for instance, see chapters 14 and 27). Artificial lighting may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see §§ 6-366 and 14-76).
- (7) Wildlife management, as wildlife preserves.

(e) *Special exception uses and structures.* Upon a finding that the proposed use or structure is consistent with the standards set forth in § 34-88, as well as all other applicable town regulations, the town council may permit any specific use or structure from the following list as a special exception, subject to conditions set forth in this chapter and in the resolution of approval:

- (1) Accessory structures, to include any building, structure, or impervious surface area which is accessory to a use permitted by right or by special exception in the EC district (see § 6-366).
- (2) Nature study center, noncommercial, and its customary accessory uses.
- (3) Single-family residence and its customary accessory uses at a maximum density of one dwelling unit per twenty acres.

(f) *Additional regulations.* See additional requirements in:

- (1) Article I of ch. 14 pertaining to beach and dune management;
- (2) Article IV of ch. 14 pertaining to wetlands protection); and
- (3) Coastal zone regulations in § 34-1575.

**Secs. 34-653--34-660. Reserved.**

**Table 34-3 — Dimensional Regulations in Conventional Zoning Districts**

<b>ZONING DISTRICT</b>	<b>Setbacks</b> (see § 34-638 for explanation and exceptions)						<b>Lot size</b> (see § 34-637 for explanations and exceptions)			<b>F.A.R.</b> § 34-633	<b>Building Coverage</b> § 34-634	<b>Density</b> § 34-632	<b>Height</b> (see § 34-631)	
	street	side -waterfront lot	side -non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	percentage		feet	stories
<b>RS Residential Single-family</b>	25	7.5 (8)	7.5 (8)	20	25	50	7,500	75	100	—	40%	(3), (4)	25	3
<b>RC Residential Conservation</b>	25	7.5	7.5	20	25	50	4,000	45	80	—	40%	(3), (4), (5)	25	3
<b>RM Residential Multifamily</b>	25	20 (6)	20 (6)	20	25	50	7,500	75	100	1.2	—	(3), (4), (5)	30	3
<b>CR Commercial Resort</b>	10	20	15	20	25	50	20,000	100	100	1.2	—	(3)	30	3
<b>CM Commercial Marina</b>	20	20	20	20	0	50	20,000	100	100	1.0	—	—	35	3
<b>CO Commercial Office</b>	10	10	7	20	25	50	7,500	75	100	1.2	—	(3), (4), (5)	30	3
<b>SANTOS</b>	10	7	5	20	25	50	5,000	50	100	0.6	—	(3), (4), (5)	25	3
<b>IN Institutional</b>	20	10	7	20	25	50	7,500	75	100	0.8	—	(3)	35	3
<b>CF Community Facilities</b>	20	15	10	20	25	50	N/A	N/A	N/A	0.1	—	(3)	35	3
<b>BB Bay Beach</b>	— see § 34-651(b) —													
<b>EC Environmen- tally Critical</b>	20	25	—	25	20	50	(7)	N/A	N/A	.01	—	(3), (7)	25	2
<p>Note (1): An additional wetland buffer is required for new development; see § 34-638(c).</p> <p>Note (2): See § 34-638(d)(3)a.</p> <p>Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see § 34-632.</p> <p>Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see § 34-1178.</p> <p>Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see §§ 34-632, 34-1177, and 34-1178.</p> <p>Note (6): Single-family and two-family homes on waterfront lots in the RM zoning district must maintain only a 7.5-foot side setback.</p> <p>Note (7): See § 34-652(e)(3).</p> <p>Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.</p>														

## Redevelopment Zoning Districts

### DIVISION 5. REDEVELOPMENT ZONING DISTRICTS

#### *Subdivision I. Generally*

#### Sec. 34-661. General purpose.

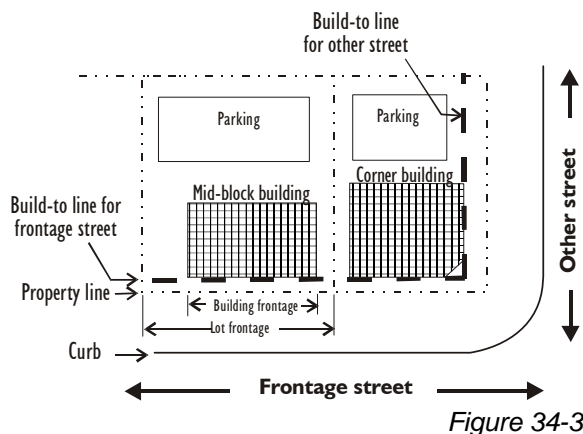
The purpose of the redevelopment zoning districts is to implement specific redevelopment concepts established in the Fort Myers Beach Comprehensive Plan and for other situations where conventional or planned development zoning districts are inappropriate. These districts require more detailed regulations than provided by conventional zoning districts, and use special terms as described in the following sections. Article IV of this chapter also contains supplemental regulations that apply to multiple zoning districts.

#### Sec. 34-662. Build-to lines and setback lines.

##### (a) *Build-to and setback lines distinguished.*

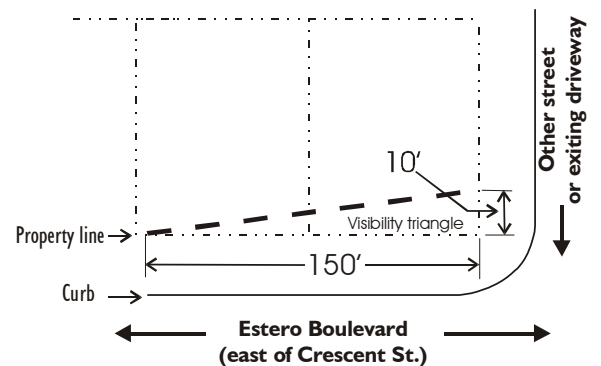
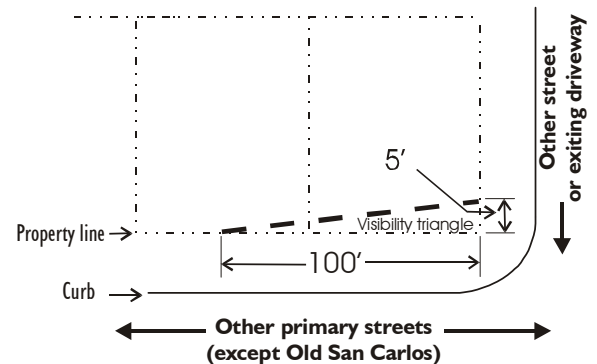
Most redevelopment districts specify build-to lines for street frontages and setback lines for side and rear property lines.

- (1) A build-to line identifies the *precise* horizontal distance (or range of distances) from a street that the front of all primary structures must be built to, in order to create a fairly uniform line of buildings along streets.
- (2) A setback line identifies the *minimum* horizontal distance between a property line and the nearest point of all structures, in order to ensure a minimum area *without* buildings.



##### (b) *General requirements for build-to lines.*

- (1) Build-to lines are illustrated conceptually on Figure 34-2.
- (2) Where a build-to line is specified as a range (for instance, 5 to 10 feet), this means that building fronts must fall within that range of distances from the front property line. Where there is a range, the front facade does not have to be parallel to the street or in a single plane, as long as the front facade remains within the range.
- (3) At least 75% of the building frontage is required to align with the build-to line. The remaining 25% may be recessed up to 10 feet behind the build-to line, for instance to provide recessed pedestrian entrances or simply for architectural diversity. (See also § 34-997 regarding plazas.)
- (4) Build-to lines are subject to adjustment to maintain visibility for vehicles exiting onto primary streets.
  - a. Visibility triangles must be maintained on both sides of intersecting streets and exiting driveways as shown in Figures 34-3 and 34-4, or to provide equivalent visibility.



## Redevelopment Zoning Districts

- b. Within these triangles, no buildings, shrubs, or low-hanging tree limbs may obstruct visibility between the height of 2 feet and 6 feet above ground. However, visibility triangles are not required at intersections with roundabouts or all-way stop signs.
- (5) Build-to line requirements may be adjusted by the director to avoid trees larger than 8 inches in diameter (measured 54 inches above grade).
- (6) Upper stories are encouraged to remain in the same vertical plane as the first floor. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades are allowed on building exteriors provided that they comply with the commercial design standards (see § 34-995(e)).
- (7) Build-to line requirements shall take precedence over any buffer or setback requirements imposed by other portions of this code.
- (c) **General requirements for setback lines.**
- (1) *Setbacks from property lines.* Minimum setbacks from property lines are defined for each zoning district. See § 34-638 for general requirements on setbacks.
- (2) *Setbacks from water bodies.* Minimum setbacks from water bodies including the Gulf of Mexico are provided in § 34-638(d)(3).

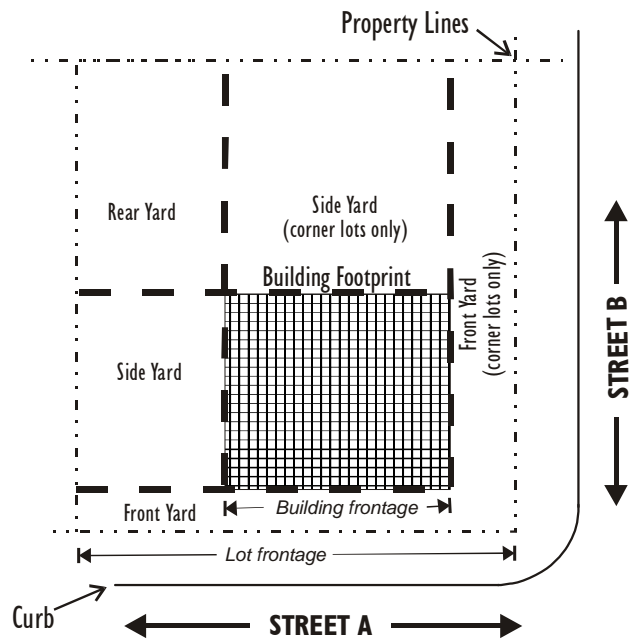


Figure 34-6

### Sec. 34-663. Building frontages and lot frontages.

Building frontage is the length of a building facade that faces a street. Building frontages and lot frontages are illustrated on Figure 34-5.

### Sec. 34-664. Commercial design standards.

Except where this code specifically provides otherwise, the commercial design standards (see § 34-991–1010) apply in all redevelopment zoning districts to all commercial and mixed-use buildings or portions thereof that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

### Sec. 34-665. Reserved.

### Sec. 34-666. Property development regulations.

In all redevelopment zoning districts, land use is controlled through the more specific property development regulations that are provided in the remainder of this division.

### Secs. 34-667--34-670. Reserved.

# DOWNTOWN

## Subdivision II. DOWNTOWN Zoning District

### Sec. 34-671. Purpose.

The purpose of the DOWNTOWN district is create the desired quality and character for the center of pedestrian-oriented commercial activities within the town. New commercial buildings are expected to accommodate pedestrians by providing storefronts near sidewalks and by offering shade and shelter along major streets. Old San Carlos Boulevard will serve as the town's "Main Street" and will be anchored by pedestrian plazas at each end.

### Sec. 34-672. District map and applicability.

(a) The area indicated on Figure 34-6 is the outer perimeter of the DOWNTOWN district. Properties that have been zoned into a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the DOWNTOWN district, even if the property is shown on Figure 34-6.

(b) Streets have been categorized into primary streets, secondary streets, and pedestrian plazas to guide the regulations for properties fronting each type of street.

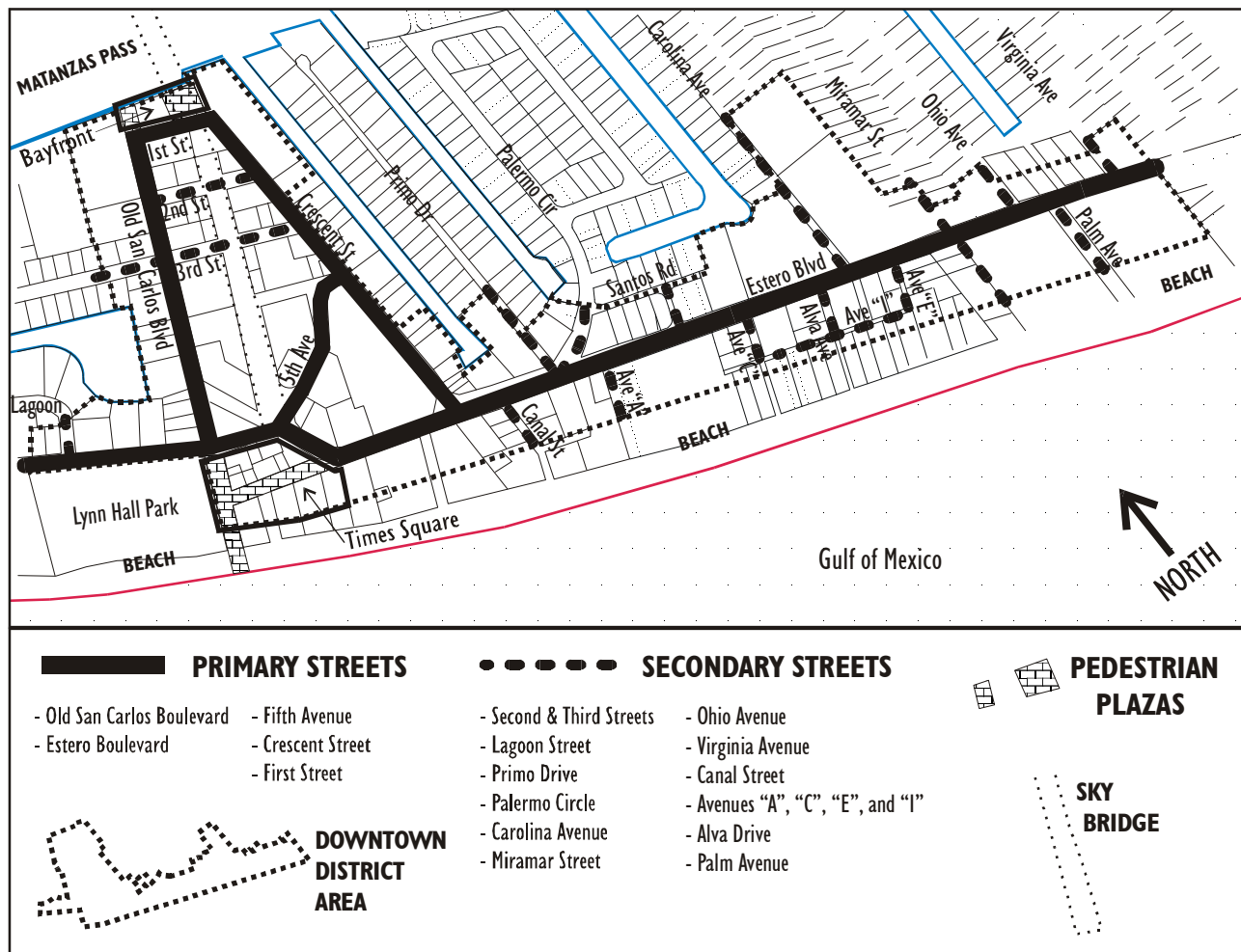


Figure 34-7

## DOWNTOWN

### Sec. 34-673. Allowable uses.

In the DOWNTOWN district, allowable uses are defined in Table 34-2, § 34-676(f), and § 34-678.

### Sec. 34-674. Building placement.

(a) **Build-to lines established.** Build-to lines (see § 34-662) vary according to the streets and street types designated on Figure 34-6.

- (1) Build-to lines for all streets are 5 feet to 10 feet from front property lines, except:
  - a. Build-to lines are 0 feet for Old San Carlos Boulevard, all properties facing the Times Square and Bayfront pedestrian plazas, and Estero Boulevard west of the Sky Bridge.
  - b. Built-to lines are 0 to 5 feet for all of First, Second, Third, and Fifth, and the south side of Estero Boulevard from the Sky Bridge to Miramar Street.
- (2) The adjustments to build-to lines to maintain visibility that are required by § 34-662(b)(4) do not apply:
  - a. to building fronts facing the Times Square or Bayfront pedestrian plazas, or
  - b. to building fronts along Old San Carlos Boulevard, where wide sidewalks and on-street parking lanes will allow the necessary visibility.
- (3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ 34-991–1010) and are required along Old San Carlos Boulevard.
- (4) Enclosed habitable space may also be allowed over a public right-of-way if located over an arcade or colonnade that shades a public sidewalk (see § 34-995(e)(6)), provided that specific permission is granted by the Town of Fort Myers Beach.

(b) **Setback lines established.** Setback lines (see § 34-662) are established as follows:

- (1) For principal buildings:
  - a. Minimum rear setbacks are 25 feet from rear property lines, except as follows:
    1. In Times Square, as defined on Figure 34-6, the minimum rear setback is 10 feet.

2. In areas where parking garages could be built, as defined on Figure 34-7, buildings shall be placed so as not to preclude future parking garages from being built on the interiors of these blocks. Along Old San Carlos Boulevard blocks with potential parking garages, this requirement means that principal buildings shall not extend further to the rear of lots than 50 feet back from the right-of-way for Old San Carlos Boulevard.

- b. Minimum side setbacks are 5 feet from side property lines, except they may be 0 feet for properties fronting on Old San Carlos, Estero Boulevard, and in Times Square.
  - c. Minimum setbacks from water bodies are set forth in § 34-638(d)(3).
  - d. Minimum setbacks along those portions of properties abutting the town-owned parking lot between Old Carlos Boulevard and the Sky Bridge that had been platted as “Center Street” in Plat Book 9, Page 9 shall be the same as if those properties abutted any other private property.
- (2) For accessory structures, minimum setbacks are set forth in § 34-1171–1176.

### Sec. 34-675. Building size.

(a) **Building frontage.** Building frontage limits (see § 34-663) vary according to the street types designated on Figure 34-6:

- (1) For pedestrian plazas and primary streets except for Crescent Street and for Fifth Avenue east of the Sky Bridge, building frontages shall be at least 70% of the lot frontage.
- (2) For all other streets, building frontages shall be at least 35% of the lot frontage.
- (3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
- (4) *Exception for properties between Estero Boulevard and the Gulf:* The required building frontage percentage may be reduced to 35% for properties between Estero Boulevard and the Gulf of Mexico provided

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that the open space thus created allows open views to the Gulf of Mexico.

(b) **Building height.** Building heights (see § 34-631) shall be limited to:

- (1) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than two stories:
  - a. Times Square and Bayfront pedestrian plazas (see Figure 34-6)
  - b. North side of First Street
  - c. South side of Estero Boulevard between Old San Carlos Boulevard and the main pedestrian crossing
  - d. Carolina Avenue
- (2) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than two stories, except that an elevated building without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation):
  - a. Lagoon Street
  - b. Crescent Street
  - c. First, Second, Third, and Fifth (east of the Sky Bridge only)
  - d. North side of Estero Boulevard west of Old San Carlos Boulevard and east of Crescent Street
  - e. Primo Drive
  - f. Palermo Circle
  - g. Miramar Street, north of Estero
  - h. Ohio Avenue
  - i. Virginia Avenue
- (3) For properties that front on the following streets, a maximum of 40 feet above base flood elevation and no taller than three stories:
  - a. Old San Carlos Boulevard between Fifth and First Streets
  - b. South side of First and both sides of Second and Third (west of the Sky Bridge only)
  - c. South side of Estero Boulevard east of the main pedestrian crossing
  - d. Canal Street
  - e. Avenues A, C, E, and I
  - f. Alva Drive
  - g. Miramar Street, south of Estero
  - h. Palm Avenue

(c) **Floor area ratio (FAR).** Floor area ratios (see § 34-633) shall not exceed:

- (1) 1.8 for properties fronting on Old San Carlos between Fifth and First Streets and fronting on the Times Square pedestrian plaza (see Figure 34-6).
- (2) 1.4 for properties fronting on Estero Boulevard and fronting on the Bayfront pedestrian plazas.
- (3) 1.0 for all other properties in the DOWNTOWN district.

(d) **Hotel rooms.**

- (1) Along both sides of Old San Carlos Boulevard (properties between Fifth and First Streets that lie within 200 feet east and west of the centerline of Old San Carlos only), a property owner may substitute hotel rooms for allowable office space on upper floors without the limitations otherwise provided by the hotel-room equivalency factor found in § 34-1802. However, these hotel rooms must have at least 250 square feet per rentable unit.
- (2) In all other properties in the DOWNTOWN district, the number of hotel rooms are limited by the hotel-room equivalency factor found in § 34-1802.

### Sec. 34-676. Circulation and parking.

(a) **Off-street parking reductions.** The DOWNTOWN district is planned as a “park-once” district, with preference given to pedestrian movement within the district. On-street parking will be provided by the town along Old San Carlos Boulevard and other public parking is available under the Sky Bridge. For these reasons, substantial reductions are allowed to the normal off-street parking requirements found in § 34-2020. The follow percentages shall be multiplied by the number of off-street parking spaces normally required by § 34-2020 to determine the adjusted off-street parking requirements along various streets in the DOWNTOWN district:

- (1) Old San Carlos Boulevard, multiply by 50%.
- (2) Bayfront pedestrian plazas (see Figure 34-6), multiply by 50%. No parking spaces may be provided in the Bayfront pedestrian plaza, but the required spaces must be located within 750 feet in single-purpose, shared, or joint-

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use parking lots (see division 26 of this chapter).

- (3) Times Square pedestrian plaza (see Figure 34-6), multiply by 0%.
- (4) All other streets in the DOWNTOWN district, and all land on Crescent Street regardless of zoning district, multiply by 67%.

(b) **Parking lot locations.** Off-street parking lots shall be placed in rear yards (see Figure 34-5).

- (a) Off-street parking lots are not permitted in front yards or side yards, except they may be placed in the side yards of buildings on properties that front the beach side of Estero Boulevard if the unbuilt area thus created allows open views to the Gulf of Mexico.
- (2) Off-street parking may be provided *under* commercial or mixed-use buildings along Old San Carlos Boulevard provided that all under-building parking spaces are separated from sidewalks by usable commercial space at least 20 feet deep that meets all commercial building design guidelines in §§ 34-991–1010. Off-street parking may be provided under commercial or mixed-use buildings at other locations in accordance with § 34-992(c).

(c) **Parking lot interconnections.** Rear-yard parking lots on properties fronting along Old San Carlos Boulevard shall be interconnected to eliminate or minimize driveways to Old San Carlos Boulevard.

- (1) To ensure the effective use of these connections, the first to develop shall be required to make an irrevocable offer of cross-access to the adjacent parcel (prior to issuance of a development order), and must design and build the parking lot to accommodate cross-access.
- (2) When adjacent owners seek development orders, they will also be required to reciprocate with a similar cross-access agreements and then must complete the physical connection.
- (3) Individual property owners shall control all rights to the use of their own parking spaces, but may choose to allow wider use of these

spaces for a fee of their choosing or through reciprocal arrangements with other parties.

(d) **Driveway connections.**

- (1) *Properties fronting on Estero Boulevard.*  
Existing driveways and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property.
- (2) *Properties fronting on other primary streets.*
  - a. For properties fronting primary streets other than Estero Boulevard, driveways should be connected to secondary streets whenever possible.
  - b. When a driveway onto a primary street is unavoidable, the driveway shall be shared with an adjoining property if that property also has access only to that primary street. Otherwise, the driveway shall be spaced as far as practical from other driveways or intersections.
- (3) *Properties fronting only on secondary streets.*  
Driveways may be connected to secondary streets, existing easements, or alleys.
- (4) *Properties adjoining pedestrian plazas.*  
Driveways and other vehicular access shall not be provided from pedestrian plazas.



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(e) **Parking garages.** The town has identified three potential locations for mid-block parking garages through its Old San Carlos Boulevard / Crescent Street Master Plan.

- (1) Each potential location is indicated in black on Figure 34-7. Construction of these parking garages is not required by this code, but the regulations for the DOWNTOWN district are designed to place new buildings on these sites so that they will not block a parking garage from being built there in the future.

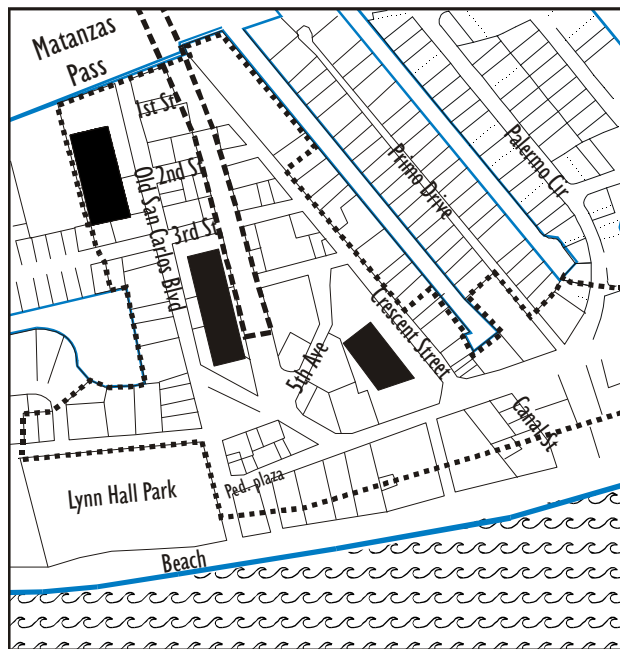


Figure 34-8

- (2) All levels of parking garages must be separated from primary streets and pedestrian plazas by a liner building that provides usable building space at least 20 feet deep (see Figure 34-8).
  - a. Liner buildings must be two stories or more in height and must be at least as tall as the parking garage.
  - b. Liner buildings may be detached from or attached to the parking garage.
  - c. Parking garages and their liner buildings are required to meet the commercial design standards (see §§ 34-991–1010).

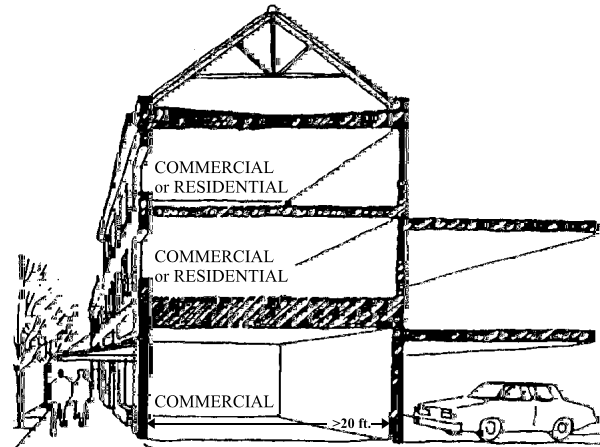


Figure 34-9

- (3) Access to a parking garage may be provided as follows:
  - a. Access to a secondary street or road easement is preferred.
  - b. Access to a primary street is not permitted except in unusual circumstances where no other access is feasible and when approved as a variance or deviation to this code.
  - c. Access may not be provided across a pedestrian plaza.
- (4) Parking garages can be approved only by rezoning to the Commercial Planned Development zoning district.

(f) **Drive-through lanes.** Drive-through lanes are generally not allowed in the DOWNTOWN district because traffic generated by drive-through lanes harms a pedestrian environment. The only exception to this rule is that Type 1 drive-throughs (see definition in § 34-2) may be approved by special exception on the north side of Estero Boulevard east of Palermo Circle. In this situation, the number of drive-thru lanes is limited to two lanes, and they shall not be accessed directly, for either entrance or exit, from a separate driveway on Estero Boulevard; they may be accessed from any of the secondary streets or from a shared driveway on Estero Boulevard.

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### Sec. 34-677. Additional requirements.

(a) **Commercial design standards.** The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

(b) **Open space and buffers.** There are no minimum open space and buffer requirements in the DOWNTOWN district comparable to the standards found in ch. 10, except in three instances:

- (1) Portions of properties that lie east of Palermo Circle and more than 300 feet beyond the north edge of the Estero Boulevard right-of-way shall retain 50% of that portion as open space. This open space may be a stabilized sodded area useable for overflow parking.
- (2) Residential buffers are required between commercial or mixed-use buildings and single-family residential lots for properties on the north side of Estero Boulevard east of Palermo Circle. These buffers shall be constructed in accordance with the buffer requirements of ch. 10 of this code.
- (3) Buffers are required between any off-street parking lot and a public street in accordance with the buffer requirements of ch. 10 of this code.

(c) **Core area overlay district.** An optional core area overlay district was adopted by the town by Ordinance 96-20. That district was replaced with the DOWNTOWN zoning district by Ordinance 03-03. Landowners who chose to be governed by the core area overlay district agreed in writing to be bound by its provisions for ten years. Compliance with this code, including all requirements of the DOWNTOWN zoning district, is deemed by the town as satisfying those agreements. However, all provisions of those agreements relating to off-site parking remain in full effect.

### Sec. 34-678. Outdoor display and sales of merchandise and food.

(a) **Generally.** Merchandise, food, and beverages may be displayed or sold outdoors in the DOWNTOWN zoning district only in accordance with this section.

(b) **Purpose.** The purpose of these regulations is to enhance the pedestrian environment of the town’s business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town’s sense of place and property values.

- (1) Outdoor display of merchandise allows retailers an opportunity to inform and interest the public by offering a small sample of the products that are available inside. Outdoor display can also be appropriate for small retail products that are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
- (2) Outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items. The principal purpose of outdoor display in the DOWNTOWN district is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for freestanding businesses or for mobile vendors (which are regulated in § 34-3002).
- (3) Restaurants are encouraged by this code to provide outdoor dining. Outdoor dining between a restaurant and a street is regulated by this section. The sale of alcoholic beverages outdoors is also regulated by state liquor laws and by § 34-1264 of this code.
- (4) See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq.

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(c) **Allowable locations for outdoor activities.** Table 34-4 summarizes the allowable locations for outdoor display of merchandise and outdoor dining in the DOWNTOWN zoning district.

Table 34-4 — Outdoor Activities in the DOWNTOWN Zoning District			
Display Type \ Location	PRIVATE PROPERTY (between store & street)		PUBLIC PROPERTY (Times Square pedestrian plaza)
	On porch	On patio	see (f)
<b>MERCHANDISE</b> , as further limited by other provisions of § 34-678:			
Vending carts – see (d)(1)	no	YES	no
Clothing racks – see (d)(2)	YES	no	no
Specialized displays – see (d)(3)	YES	YES	no
Mannequins – see (d)(4)	YES	YES	no
Tables/shelves – see (d)(5)	YES	no	no
Freestanding displays – see (d)(6)	YES	YES	no
<b>DINING:</b>			
Vending carts – see (d)(1)	no	YES	no
Dining tables – see (d)(7)	YES	YES	YES

(d) **Types of outdoor displays.**

- (1) **Vending carts** are limited to 2 wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts that have been manufactured to be secured at night, with fitted side panels, may be left outside when a business is closed. All other vending carts must be moved indoors when the business is not open. Within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center, all vending carts must be moved indoors, removed from the county, or placed within an approved off-island storage area. Figure 34-9 shows two suggested vending cart designs.



Figure 34-9

- (2) **Clothing racks** are limited to one support rod up to 6 feet long on which clothing is hung. Similar displays whose principle function is for the display of clothing, swimwear, and other garments shall be considered a clothing rack. Clothing racks are often mounted on wheels. Figure 34-10 shows a typical clothing rack.



Figure 34-10

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- (3) **Specialized display racks** are unique displays for a specific type of product. An example is a rack to hold beach toys or accessory items. Specialized display racks are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area. Figure 34-11 shows a specialized display rack.



Figure 34-11

- (4) **Freestanding mannequins** are used to display clothing or swimwear. Figure 34-12 shows a typical freestanding mannequin.



Figure 34-12

- (5) **Tables or freestanding shelves** are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area, and may not be more than 3 feet in height. Figure 34-13 shows a typical freestanding table with merchandise.



Figure 34-13

- (6) **Freestanding product displays** can be used for products such as lawn and garden accessories or windsocks that are appropriately displayed on their own. These types of products may be displayed within a 4-foot by 8-foot area or with a maximum of 7 individual products. Figure 34-14 shows typical freestanding product displays.



Figure 34-14

## DOWNTOWN

- (7) **Dining tables** are used to serve food and beverages to the public. Figure 34-15 shows typical dining tables on the Times Square pedestrian plaza.



Figure 34-15

(e) **PRIVATE PROPERTY: number, location, and types of outdoor displays and dining tables.** Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way only if the merchandise is placed on a raised porch or a patio, as defined in this subsection. No business may have more than two outdoor displays of merchandise, as defined in subsection (d). For example, a business may qualify for two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. Multiple occupancy structures with two or more businesses are limited to one outdoor display for each business up to a maximum of four outdoor displays per multiple occupancy structure.

- (1) **Porches and patios.** Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, porches and patios are defined as follows:
- Porch** is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning, roof, or umbrellas. Wood must be painted or stained. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.
  - Patio** is an area covered with paver bricks, concrete, wood, or similar material and

located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio. Patios are encouraged to be shaded with an awning or umbrella or with a roof that is an integral part of the outdoor display. Businesses without porches are encouraged to use patios. New or expanded patios must comply with all chapters of this code.

- (2) **Permitted merchandise and types of outdoor display.** The following types of merchandise may be displayed outdoors using the display type described in subsection (d):

- Art** (prints, sculpture, etc.): 1, 3, 5, 6
- Bathing suits and swimwear:** 1, 2, 4
- Beach accessories** (umbrellas, chairs, etc.): 1, 6; rental of beach equipment on the beach is regulated in § 14-5 of this code.
- Beach towels:** 1, 2, 3, 5
- Beach toys, rafts, and floats:** 1, 3, 5
- Clothing:** 1, 2, 4, 5
- Clothing accessories** (jewelry, purses, etc.): 1, 3, 4, 5
- Kites and windsocks:** 1, 6
- Lawn and garden accessories:** 1, 6
- Small retail items** (souvenirs, suntan lotion, flowers, books, etc.): 1, 5
- Merchandise not specifically listed:** 1, or on permitted display type for the most similar item.
- Personal services** including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.

- (3) **Additional rules for outdoor displays of merchandise.**

- A retail store wishing to display merchandise outdoors in the DOWNTOWN zoning district must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code.
- Merchandise that is displayed outdoors must be available for sale inside the store.
- All outdoor displays must be brought indoors during any hours that the business is not open, except as provided for vending carts in subsection (d)(1).

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- d. Outdoor displays may contain no business or product identification signage whatever; each display may have one 4 inch by 6 inch sign to display prices.
  - e. All outdoor displays must be non-motorized and movable by hand and may be no taller than 10 feet.
  - f. Merchandise may not be attached to the building or to a railing unless incorporated into an approved type of outdoor display, such as a specialized display rack, mannequin, or freestanding product display (see subsection (d)).
- (4) **Outdoor dining.** A restaurant wishing to provide outdoor seating between the restaurant and a street must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code. The seating must be located on a porch or patio as defined in this subsection. The sale of alcoholic beverages outdoors is regulated by state liquor laws and by § 34-1264 of this code.
- (5) **Permit required.** A permit is required for each business wishing to display merchandise outdoors or to place outdoor seating in conformance with this section.
- a. Permits may be issued for up to one year and shall expire each year on September 30.
  - b. Permit applications may be filed at any time using forms available from town hall. Applications should be accompanied by photographs or drawings that clearly indicate the type, character, number, and size of outdoor displays or dining tables that are being proposed.
  - c. Permits may be issued by the town manager. The town manager may also choose to refer an application to the town council for its consideration in lieu of administrative issuance or rejection.
  - d. Permits may include modifications to the standards in this section to better accomplish the purposes set forth in subsection (b). Other reasonable conditions may also be imposed regarding the layout and physical design of porches, patios, vending carts, specialized display racks, shelves, tables, and umbrellas.
- e. Outdoor display and dining permits may be suspended by the town manager for noncompliance with the permit. Suspensions may be appealed to the town council in accordance with procedures set forth in § 34-86 for appeals of administrative decisions. Suspension of a permit does not preclude the town from pursuing any of the other enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2).
- (f) **PUBLIC PROPERTY:** No merchandise may be displayed outdoors on public property. Restaurants may extend their operations onto public sidewalks and plazas only as follows:
- (1) **General location.** These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6) and other locations if explicitly approved by the town council.
  - (2) **Who may operate.** Vending rights are available only to the owner of the private property that immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.
  - (3) **Specific location.** Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines. Vending rights may extend onto public property only as far as specified in the annual permit and may be further modified by the town as necessary to provide adequate room for pedestrian movement and to ensure fair treatment for restaurants located on opposite sides of the Time Square pedestrian plaza.
  - (4) **Outdoor dining.** No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted.
  - (5) **Permit required.** Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:

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- a. Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
- b. Restrictions on the extent to which food not available in the abutting business may be sold;
- c. Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
- d. Insurance requirements;
- e. Payment of fees established by the town for vending rights;
- f. Limitations on leasing of vending rights, if any; and
- g. Other reasonable conditions as determined by the town, including full approval rights over the design of umbrellas, carts, tables, etc.

Permitting procedures and enforcement shall be the same as provided in subsection (e)(5).

**Secs. 34-679--34-680. Reserved.**



# SANTINI

## Subdivision III. SANTINI Zoning District

### Sec. 34-681. Purpose.

The purpose of the SANTINI district is to provide alternative futures for the Santini Marina Plaza, either a continuation of the current marina and shopping center or their transformation into a pedestrian-oriented neighborhood center.

- (1) The existing stores and marina in the SANTINI district may continue in full operation and may be renovated or redeveloped in accordance with § 34-682.
- (2) As an alternative, the SANTINI district provides a second set of regulations (in § 34-683) that would allow the transformation of the shopping center and marina into a pedestrian-oriented neighborhood center:
  - a. The SANTINI district can become a neighborhood center to serve visitors and the populous south end of the island in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan (see Policies 3-C-1, 3-C-2, and 4-F-2-ii).
  - b. The site could support additional mixed-use buildings if provided with shared parking, a pattern of smaller blocks, and an urban plaza.
  - c. Full realization of this concept will require a partnership between the property owners and the town that will transform the adjoining portion of Estero Boulevard from a rural highway with deep swales into a street with shaded sidewalks and some on-street parking.

### Sec. 34-682. District map and applicability.

The area indicated on Figure 34-16 is the outer boundary of the SANTINI district.

- (1) Properties that are currently zoned in a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the SANTINI district, even if the property is shown on Figure 34-16.

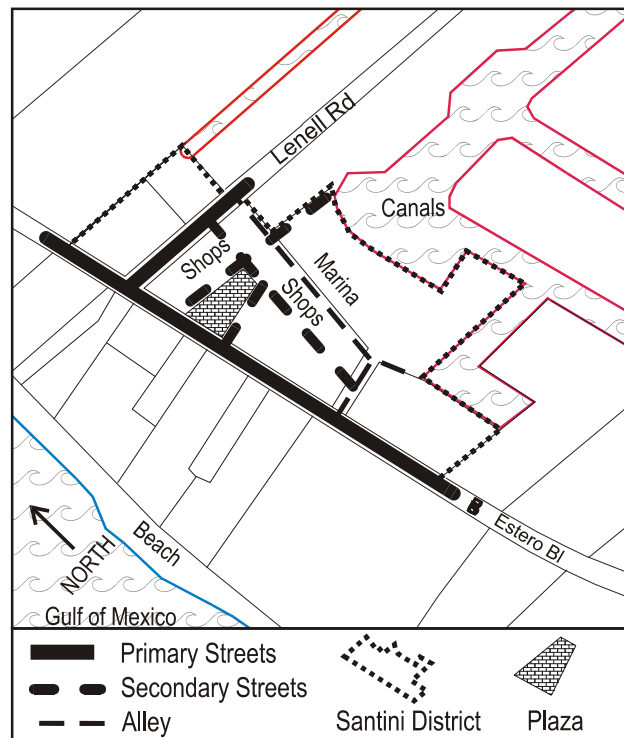


Figure 34-17

- (2) For properties zoned into the SANTINI district rather than in a PD district, the applicable regulations are as follows:
  - a. **Continued use of existing buildings.** The regulations in this section apply to the continued use of existing buildings and structures for allowable uses as defined in Tables 34-1 and 34-2 for the SANTINI zoning district.
  - b. **Renovating, enlarging or replacing individual buildings.**
    1. Existing buildings may be renovated, enlarged, or replaced as follows:
      - a- Physical enlargement of existing buildings is permitted provided that the improvements do not constitute a “substantial improvement” as that term is defined in § 6-405 of this code, and
      - b- Replacements for existing buildings are permitted provided that they will not increase the existing floor area ratio, as that term is defined in § 34-633.



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2. Renovations, enlargements, and replacements to existing buildings are governed by the regulations for the CM zoning district as provided in Table 34-3 and by the other limitations in this section.
  3. The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built.
  4. Any specific deviations granted by prior CPD resolutions shall remain in effect for properties that are zoned into the SANTINI district.
- (3) ***Transformation of existing businesses into a neighborhood center.*** Physical enlargements of existing buildings that constitute a “substantial improvement” as that term is defined in § 6-405 must be in the form of a neighborhood center as described in § 34-683.

### Sec. 34-683. Creation of neighborhood center.

(a) ***Purpose.*** This section provides detailed regulations for the transformation of existing businesses into a neighborhood center.

- (1) This transformation may be required by § 34-682(3) or may be chosen by any landowner in the SANTINI district.
- (2) Once this option is chosen or required, all subsections of § 34-683 become mandatory requirements, except where they are clearly inapplicable to a given portion of the property.

(b) ***Agreement for streetscape improvements.*** Landowners who choose to partially or fully develop their land in the SANTINI district into a neighborhood center may simultaneously request public streetscape improvements by entering into a development agreement with the town (see § 2-91–102).

- (1) This agreement would establish a public/private partnership for the necessary improvements, identifying responsibilities, timing, approximate costs, and funding.
- (2) This agreement would also contain a detailed plan for the redevelopment of the property

consistent with the regulations in the remainder of this section.

(c) ***Allowable uses.*** Allowable uses for the SANTINI zoning district are defined in Tables 34-1 and 34-2.

(d) ***Streets.*** Secondary streets and alleys shall be laid out and dedicated to the public generally in accordance with Figure 34-16 to improve circulation for vehicles and pedestrians.

(e) ***Plazas.*** An urban plaza at least ½ acre in size shall be provided along Estero Boulevard as a focal point for mixed-use buildings and as a public gathering place. This plaza may also be used for overflow parking.

(f) ***Build-to lines established.*** Build-to lines (see § 34-662) vary according to the streets and street types designated on Figure 34-16.

- (1) Build-to lines for all primary streets and streets surrounding the plaza are 0 feet to 5 feet.
- (2) Build-to lines for all secondary streets are 0 feet to 10 feet.
- (3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§ 34-991–1010), especially along Estero Boulevard.
- (4) Compliance with build-to lines is not required for buildings that are used for the storage of boats or for marina accessory uses, or for any buildings extend closer than 40 feet to the waterfront.
- (5) Buildings used for the storage of boats or cars must be separated from Estero Boulevard by a liner building that provides usable building space at least 20 feet deep (see example in Figure 34-8).
  - a. This requirement applies to all buildings that extend closer than 75 feet to Estero Boulevard.
  - b. Liner buildings must be two stories or more in height.
  - c. Liner buildings may be detached from or attached to building space used for the storage of boats or cars.

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- d. Liner buildings must be constructed simultaneously with those portions of buildings that are subject to this requirement.
- e. Liner buildings and any visible portions of the principal facade of buildings that are used for the storage of boats or cars must meet the commercial design standards (see §§ 34-991–1010).
- (g) **Setback lines.** No minimum setbacks are required (see § 34-662).
- (h) **Building frontage.** Building frontage limits (see § 34-663) vary according to the street types designated on Figure 34-16:
  - (1) For primary streets and streets surrounding the plaza, building frontages shall be at least 70% of the lot frontage.
  - (2) For secondary streets, building frontages shall be at least 35% of the lot frontage.
  - (3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
  - (4) Phased redevelopment is permitted provided that a site plan is provided showing how the building frontage percentages will be met upon completion of the redevelopment
- (i) **Building height.** Building heights (see § 34-631) shall be limited to:
  - (1) For parcels immediately abutting a plaza of at least ½ acre in size and for parcels immediately abutting canals, a maximum of 40 feet above base flood elevation and no taller than three stories.
  - (2) For all other parcels, a maximum of 30 feet above base flood elevation and no taller than two stories.
- (j) **Floor area ratio (FAR).** Floor area ratios shall not exceed 1.0 (see § 34-633).

(k) **Residential density.** Residential units can be constructed in the SANTINI district up to the maximum density allowed by the Fort Myers Beach Comprehensive Plan.

(l) **Guest units.** Guest units may be substituted for dwelling units in accordance with the equivalency factors found in § 34-1802.

(m) **Reductions to minimum parking requirements.** Neighborhood centers are “park-once” districts with preference given to pedestrian movement. The number of parking spaces normally required by § 34-2020 shall be multiplied by 67% to determine the adjusted parking requirement for the SANTINI district. Adjoining on-street parking spaces may be counted toward this parking requirement.

(n) **Parking location.** Off-street parking may be provided *under* commercial or mixed-use buildings provided that:

- (1) All under-building parking spaces must be separated from primary streets and the plaza by usable commercial space at least 20 feet deep that meets all commercial design guidelines; and
- (2) Driveways leading to under-building parking spaces must connect to a driveway, secondary street, or alley, and may not be accessed from a primary street or pedestrian plaza.

(o) **Commercial design standards.** The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

**Secs. 34-684--34-690. Reserved.**

# VILLAGE

## Subdivision IV. VILLAGE Zoning District

### Sec. 34-691. Purpose.

The purpose of the VILLAGE district is to provide alternative futures for the Red Coconut and/or Gulf View Colony, either a continuation of the current land uses or their transformation into a traditional neighborhood pattern.

- (1) The existing residences and businesses in the VILLAGE district may continue in full operation and may be renovated in accordance with §§ 34-692 and 34-694.
- (2) As an alternative, the VILLAGE district provides a second set of regulations that would allow the transformation of either of the existing mobile home and recreational vehicle parks into more permanent and durable housing types in a traditional neighborhood pattern, in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan.

### Sec. 34-692. District map and applicability.

The area indicated on Figure 34-17 is the outer boundary of the VILLAGE district.

- (1) Properties that have been zoned into a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the VILLAGE district, even if the property is shown on Figure 34-17.
- (2) For properties zoned into the VILLAGE district rather than in a PD district, existing residences and businesses may continue in full operation and may be modified in accordance with the following regulations:
  - a. **Continued use of existing mobile homes and recreational vehicles.** The continued use of existing mobile homes and recreational vehicles is permitted in accordance with § 34-694 below.
  - b. **Continued use of and renovations, enlargements, or replacement of existing permanent buildings.**

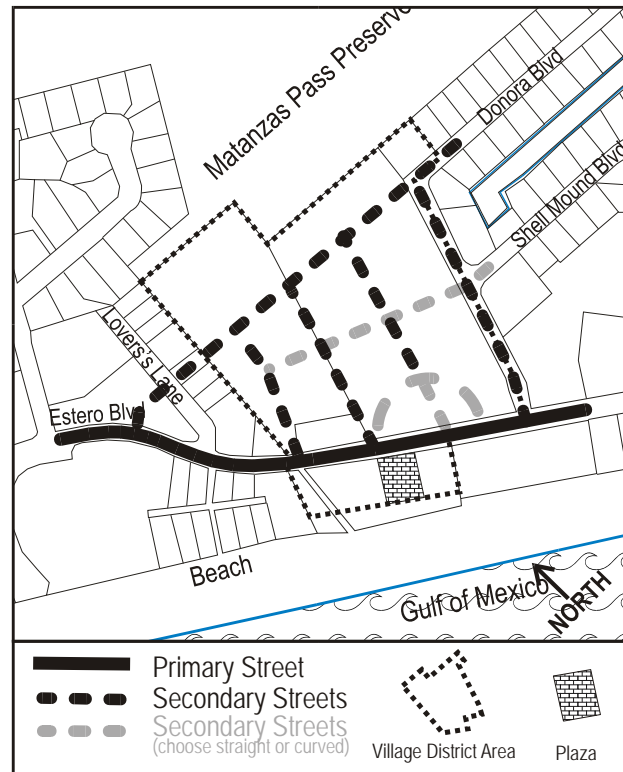


Figure 34-18

- c. Existing permanent buildings may be renovated, enlarged, or replaced as follows:
  1. Renovations and/or physical enlargement are permitted provided the improvements do not constitute a “substantial improvement” as that term is defined in § 6-405 of this code; or
    - a- Replacement buildings are permitted provided that they do not increase the existing floor area ratio, as that term is defined in § 34-633; or
    - b- Other renovations, enlargements, and/or replacements are permitted provided they comply with those regulations for the CB zoning district that are found in §§ 34-704–34-706.
  2. Allowable uses in these buildings are the same as provided in § 34-703(a) for the CB zoning district.
  3. The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings that are visible from Estero Boulevard, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

## VILLAGE

- (3) ***Transformation of existing mobile home and recreational vehicle parks.*** Policies 3-A-5, 3-A-6, and 4-F-2-iii of the Fort Myers Beach Comprehensive Plan have authorized a pre-approved redevelopment option for land in the VILLAGE district.

- a. The following concepts are expected in this redevelopment process:
  1. traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear (except for on-street parking);
  2. detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
  3. low-rise townhouses or apartments allowed elsewhere on the site;
  4. walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
  5. open space that allows views to be maintained from Estero Boulevard to the Gulf;
  6. mixed commercial and residential uses along the Bay side of Estero Boulevard;
  7. quiet internal street connections to the north and south;
  8. significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre; and
  9. a site design that accommodates a publicly acquired access point to the Matanzas Pass Preserve.
- b. At the option of landowners in the VILLAGE district, a development order may be obtained to redevelop all or part of this property in accordance with the option described in more detail in § 34-693 and generally in accordance with either of the conceptual site plans found in the Community Design Element of the Fort Myers Beach Comprehensive Plan. Until such time as this development order is obtained, the regulations in § 34-693 shall have no effect.

### **Sec. 34-693. Regulations to obtain development order for pre-approved redevelopment option.**

(a) ***Purpose.*** his section provides detailed regulations for the pre-approved redevelopment option if that option is chosen by landowners, as described in § 34-692(3).

(b) ***Allowable uses.*** Allowable uses in the VILLAGE district are defined in Tables 34-1 and 34-2. If a development order is issued pursuant to § 34-692(3), the additional uses in the “Open” subgroup of Table 34-1 for the residential, lodging, office, and retail groups will be permitted on property that is subject to the development order.

(c) ***Streets.*** Secondary streets shall be laid out and dedicated to the public generally in accordance with Figure 34-17 to improve circulation for vehicles and pedestrians.

- (1) Figure 34-17 provides two acceptable options for the new network of secondary streets.
- (2) Under either option, the street design must incorporate the extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public.

(d) ***View corridor.*** A view corridor at least 50 feet wide shall be provided between Estero Boulevard and the Gulf as a focal point for abutting buildings and as part of a prominent visual corridor to the water. This view corridor need not be available for public use.

(e) ***Build-to lines established.*** Build-to lines (see § 34-662) for all streets shall be 0 feet to 10 feet.

(f) ***Setback lines established.*** Setback lines (see § 34-662) are established as follows:

- (1) For principal buildings, minimum setbacks are as follows:
  - a. Rear setbacks: 20 feet
  - b. Water body setbacks: see § 34-638(d)(3).
- (2) For accessory structures, minimum setbacks are set forth in § 34-1171–1176.

(g) ***Building frontage.*** Building frontage limits (see § 34-663) vary according to the street types designated on Figure 34-17:

- (1) For primary streets, building frontages shall be at least 50% of the lot frontage. This

## VILLAGE

percentage may be reduced to 35% for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf.

- (2) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).

(h) **Building height.** Building heights (see § 34-631) shall be limited to:

- (1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than two stories. However, for mixed-use buildings and for elevated buildings without enclosed space on the first story, the maximum height is three stories (but still limited to 30 feet above base flood elevation).
- (2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.

(i) **Floor area ratio (FAR).** Floor area ratios shall not exceed 1.2.

(j) **Residential density.** Policy 4-F-2-iii of the Fort Myers Beach Comprehensive Plan allows up to 15 dwelling units per acre for redevelopment in accordance with this section. Any land used for roadway or access purposes may be included in this density computation.

(k) **Guest units.** Guest units may be substituted for dwelling units in accordance with the equivalency factors found in § 34-1802.

(l) **Circulation and parking.** Off-street parking may be provided *under* commercial or mixed-use buildings provided that:

- (1) All under-building parking spaces must be separated from primary streets and the plaza by usable commercial space at least 20 feet deep that meets all commercial building design guidelines; and
- (2) Driveways leading to under-building parking spaces must connect to a secondary street or an alley and may not be accessed from a primary street or pedestrian plaza.

(m) **Commercial design standards.** The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings that are visible from Estero Boulevard, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

### **Sec. 34-694. Regulations for existing mobile homes and recreational vehicles.**

(a) **Definitions.** These phrases, when used in this subdivision, shall have the following meanings:

*Park trailer* means a transportable recreational vehicle which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. “Park trailers” have a statutory definition in F.S. § 320.01(b) which may change; the use of the term “park trailer” in this subdivision is intended to change with any such statutory changes so as to be consistent with state law.

*Transient RV park* means a recreational vehicle development designed, intended for, or used by relatively short-stay visitors (transient guests) who bring their transient recreational vehicle with them and remove it at the end of their visit. The individual recreational vehicle site is then ready for another visitor.

*Transient recreational vehicle* means a camping trailer, truck camper, motor home, travel trailer, motor home, or van conversion (as those terms are defined by F.S. § 320.01(b)) which is brought to the transient recreational vehicle park by the user and is removed from the park at the end of the user’s visit. Park trailers are not considered to be transient recreational vehicles.

(b) **1987 site plan approvals.** Lee County approved site plans for Gulf View Colony and Red Coconut in 1987 to formally acknowledge the right to replace mobile homes and non-transient recreational vehicles in portions of each park in accordance with previous regulations. These site plans were approved in accordance with Lee County

## VILLAGE

Ordinance 86-36. The Town of Fort Myers Beach will continue to recognize those rights, which are incorporated into the regulations set forth in this section.

- (1) Sites in Gulf View Colony and Red Coconut shall not be reconfigured or reduced in dimension so as to increase the density.
- (2) Contiguous sites may be combined and redivided to create larger dimension sites as long as such recombination includes all parts of all sites, and allowable density is not increased, and all setback requirements are met.
- (3) The use of a recreational vehicle or park trailer by a permanent resident as a permanent residence, as the terms are defined in F.S. ch. 196, has been expressly prohibited since September 16, 1985. Persons who have established permanent residency within a recreational vehicle park as of September 16, 1985, are exempt from the residency provisions of this section, provided that the proof of residency was established by an affidavit filed with Lee County prior to October 31, 1985.
- (4) Permits shall also be issued for reroofing and roof repairs for any existing mobile home, park trailer, or recreational vehicle, regardless of lot size.

(c) **Gulf View Colony:** A site plan for Gulf View Colony was approved by Lee County on February 11, 1987, which showed 59 mobile homes sites plus common recreational features. This plan was drawn by G. H. Taylor and was dated January 10, 1987.

- (1) Lee County approved the replacement of a mobile home or park trailer on all 59 sites. These sites were determined to have been in compliance with regulations that were in effect at the time of their creation.
- (2) Replacement of mobile homes or park trailers on these sites must meet the following regulations:
  - a. All units shall have a minimum separation of ten feet between units (body to body) and appurtenances thereto. Each unit shall be permitted to have eaves which encroach not more than one foot into the ten-foot separation.
  - b. Replacement mobile homes, park trailers, and additions must meet the floodplain

elevation requirements of § 6-472(2), including the limitations on replacements where past flooding has caused “substantial damage” on specific sites.

- c. A move-on permit must be obtained in accordance with § 34-1923 and the mobile home or park trailer must comply with the tie-down and skirting requirements of that section.
- d. One freestanding storage shed or utility room, not exceeding 120 feet in floor area and ten feet in height, may be permitted provided that:
  1. No storage shed or utility room shall be located closer than five feet to any side or rear lot line or closer than ten feet to any mobile home or park trailer under separate ownership; and
  2. The shed or room is properly tied down and complies with all building code requirements.
- e. Additions to mobile homes or park trailers may be permitted provided that:
  1. The addition shall not be located closer than five feet to any side or rear lot line or closer than ten feet to any mobile home, park trailer, or addition thereto under separate ownership.
  2. The total floor area of any additions, excluding open decks and stair landings, shall not exceed the total floor area of the mobile home or park trailer.
  3. The maximum height of additions shall not exceed the height of the mobile home or park trailer.
  4. Open decks, up to 120 square feet in area, may be permitted provided all setback requirements are met. Stair landings that are incorporated into a deck shall be calculated in the square footage of the deck.
  5. Stairs or stair landings, which are attached to an addition, and which are not incorporated into an open deck, may be permitted to encroach three feet into the side and rear setbacks. No stair landing shall exceed 12 square feet in area.

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(d) **Red Coconut:** Parts of a site plan for the Red Coconut were approved by Lee County on June 2, 1987. This plan was drawn by David Depew and was dated May 20, 1987.

- (1) **Sites approved in 1987.** Lee County approved the replacement and potential enlargement of a mobile home or park trailer on each of the following sites: A7-A9, A12-A15, B12, B14-B16, C1, C7, D1, D2, D6, D8-D17, E1-E16, E18-E20, F1-F9, and G2-G12.
  - a. These sites were determined to have been in compliance with regulations that were in effect at the time of their creation.
  - b. Replacement mobile homes or park trailers on these sites must follow the same regulations as provided in § 34-694(c)(2); however, if a mobile home or park trailer incurs “substantial damage” as that term is defined in § 6-405, the landowner also has the option to merge that site into the transient RV park and use the site in accordance with § 34-694(d)(3).
  - c. Replacement mobile home or park trailers on these sites, including lawful additions, storage sheds, and utility rooms, cannot be placed closer than 20 feet to any publicly maintained street.
- (2) **Sites not approved in 1987.** Some smaller sites that also contained a mobile home or non-transient recreational vehicle were not approved for larger units in 1987: AA, A1-A6, A10-A11, A16-A17, B1-B11, B13, C2-C6a, C8-C10, D3-D5, D7-D7A, E17, K2, P2-P3, Z2-Z3, and 1-6 on the bay side of Estero Boulevard. Units on these sites may be replaced only by a unit of equal or smaller size, in accordance with the following regulations:
  - a. Any mobile home or non-transient recreational vehicle which has been lawfully placed on these sites may be replaced by a mobile home or park trailer of equal or smaller size. The director may use historical aerial photographs, or previous county or town permits if available, to verify that a replacement unit is not larger than a previous lawful unit. No additions which would cause the total size to exceed the size of the previous lawful unit will be permitted.

- b. Replacement mobile homes and park trailers must meet the floodplain elevation requirements of § 34-694(c)(2)b; however, if a mobile home or park trailer incurs “substantial damage” as that term is defined in § 6-405, the landowner also has the option to merge that site into the transient RV park and use the site in accordance with § 34-694(d)(3).
  - c. A move-on permit must be obtained in accordance with § 34-1923 and the mobile home or park trailer must comply with the tie-down and skirting requirements of that section.
  - d. One storage shed or utility room may be permitted if in compliance with § 34-694(c)(2)d.
  - e. Replacement mobile home or park trailers on these sites, including lawful additions, storage sheds, and utility rooms, cannot be placed closer than 20 feet to any publicly maintained street.
- (3) **Transient RV park.** The remainder of the sites shown on this plan may continue in operation as a transient RV park. These sites can be identified on the 1987 site plan as follows: on the Gulf of Mexico, sites 1-53; on the bay side of Estero Boulevard, sites CE1-CE7, CWO0-CW6, CRD, H1-H10, J1-J10, K1, K3-K18, L1-L4, M1-M4, N1-N14, P1, R1-R3, Y-Y-Y-Y, and Z1. The following regulations apply to these 147 sites:
- a. Transient recreational vehicles must comply with the floodplain regulations found in § 6-472(3).
  - b. Additions may not be constructed onto transient recreational vehicles.
  - c. Storage sheds and other accessory structures may not be placed on individual sites.
  - d. All travel trailers, motor homes, or camping trailers may not be left unattended for more than two weeks during the months of June through December. For purposes of this section only, the term “unattended” shall be interpreted to mean that the owner of the unit has not provided for a person to be responsible for the unit in the event of a hurricane watch alert as set forth in the following subsection.

## VILLAGE

- e. All travel trailers, motor homes, or camping trailers shall be tied down within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center. Travel trailers, motor homes, or camping trailers not tied down shall be removed from the county within 48 hours of such a hurricane watch, or placed within an approved off-lot storage area.
- f. Transient recreational vehicles cannot be placed closer than 20 feet to any publicly maintained street.

**Secs. 34-695--34-700. Reserved.**



## CB (Commercial Boulevard)

### Subdivision V. CB Zoning District

#### Sec. 34-701. Purpose.

The purpose of the CB (Commercial Boulevard) district is provide standards for existing commercial uses and certain other uses along those portions of Estero Boulevard where the “Boulevard” classification of the Fort Myers Beach Comprehensive Plan promotes a mixed-use development pattern.

#### Sec. 34-702. Applicability.

(a) **Continued use.** The regulations in this subdivision apply to the continued use of existing buildings and structures for allowable uses as defined in § 34-703 on all properties zoned CB.

(b) **Enlarging or replacing buildings for existing commercial uses.** The regulations in this subdivision also apply to the following activities:

- (1) Physical enlargement of buildings or structures containing existing commercial uses, provided that the improvements do not constitute a “substantial improvement” as that term is defined in § 6-405 of this code, and
- (2) Replacement buildings for existing commercial uses that will not increase the existing floor area ratio, as that term is defined in § 34-633.

(c) **Enlarging or replacing buildings for all other allowable uses.** The regulations in this subdivision also apply to the physical enlargement of and replacement buildings for all allowable uses other than existing commercial uses (which are governed by subsection (b)) or new or expanded commercial uses (which are governed by subsection (d)).

(d) **New or expanded commercial uses.** In accordance with Policies 4-B-5 and 4-C-3-iv of the Fort Myers Beach Comprehensive Plan:

- (1) New or expanded commercial uses in the “Boulevard” category of the Fort Myers Beach Comprehensive Plan require rezoning

as a Commercial Planned Development (see § 34-951).

- (2) Physical enlargements of existing commercial buildings that constitute a “substantial improvement” as that term is defined in § 6-405 also require rezoning as a Commercial Planned Development.
- (3) For purposes of this section only, the following types of re-use of existing floor area shall be deemed a continuation of an existing commercial use rather than a new or expanded commercial use:
  - a. an existing office use converted to another office use;
  - b. an existing retail use converted to another retail use or to an office use;
  - c. an existing restaurant converted to another restaurant or to a retail or office use;
  - d. an existing bar or cocktail lounge converted to another bar or cocktail lounge or to a restaurant, retail, or office use.

#### Sec. 34-703. Allowable uses.

(a) In the CB district, allowable uses are defined as any of the following:

- (1) Those uses defined in Table 34-2 for the CB district;
- (2) Continuation of commercial uses that were lawfully existing on March 3, 2003; and
- (3) Those additional commercial uses of existing floor space as provided by § 34-702(d)(3).

(b) Any landowner wishing to place other new or expanded commercial uses on property that is zoned CB must rezone the property to Commercial Planned Development.

(c) Any landowner wishing to subdivide land that is zoned CB into residential homesites must comply with all of the setback, lot size, intensity, and density regulations for the RC zoning district as described in Table 34-3. Compliance with these regulations shall substitute for the building placement standards that are found in § 34-704 and for the intensity standard found in § 34-705(c).

## CB (Commercial Boulevard)

### Sec. 34-704. Building placement.

(a) **Build-to lines established.** Build-to lines (see § 34-662) for Estero Boulevard are established at 5 to 10 feet from front property lines. Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ 34-991–1010).

(b) **Setback lines established.** Setback lines (see § 34-662) are established as follows:

- (1) For principal buildings:
  - a. Minimum street setbacks for all streets other than Estero Boulevard are 10 feet.
  - b. Minimum rear setbacks are 20 feet from rear property lines.
  - c. Minimum side setbacks are 5 feet from side property lines.
  - d. Minimum setbacks from water bodies are set forth in § 34-638(d)(3).
- (2) For accessory structures, minimum setbacks are set forth in § 34-1171–1176.

### Sec. 34-705. Building size.

(a) **Building frontage.** Building frontage limits (see § 34-663) are established as follows:

- (1) For Estero Boulevard, building frontages shall be at least 50% of the lot frontage. This percentage may be reduced to 35% for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf of Mexico.
- (2) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).

(b) **Building height.** Building heights (see § 34-631) shall be limited to:

- (1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than two stories, except that an elevated building without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation).

- (2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.

(c) **Floor area ratio (FAR).** Floor area ratios (see § 34-633) shall not exceed 1.0.

### Sec. 34-706. Circulation and parking.

(a) **Parking lot locations.** Off-street parking lots shall be placed in side or rear yards (see Figure 34-5). Off-street parking lots are not permitted in front yards.

(b) **Under-building parking.** Off-street parking may be provided *under* commercial or mixed-use buildings provided that all under-building parking spaces are screened in accordance with § 34-992(a)(2).

(c) **Parking lot interconnections.** Wherever physically possible, parking lots for abutting properties fronting along Estero Boulevard shall be interconnected to eliminate or minimize driveways to Estero Boulevard.

- (1) To ensure the effective use of these connections, the first to develop shall be required to make an irrevocable offer of cross-access to the adjacent parcel (prior to issuance of a development order), and must design and build the parking lot to accommodate cross-access.
- (2) When adjacent owners seek development orders, they will also be required to reciprocate with a similar cross-access agreements and then must complete the physical connection.
- (3) Individual property owners shall control all rights to the use of their own parking spaces, but may choose to allow wider use of these spaces for a fee of their choosing or through reciprocal arrangements with other parties.

(d) **Driveway connections for properties fronting on Estero Boulevard.** Existing driveways and parking spaces shall be relocated from Estero Boulevard to other streets and new driveways shall connect only to other streets, except where these

**CB (Commercial Boulevard)**

requirements would prohibit all reasonable access to a property. When a driveway onto Estero Boulevard is unavoidable, the driveway shall be shared with an adjoining property if that property also has access only to Estero Boulevard. Otherwise, the driveway shall be spaced as far as practical from other driveways or intersections.

**Sec. 34-707. Commercial design standards.**

The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

**Secs. 34-708--34-930. Reserved.**

## Planned Development Zoning Districts

### DIVISION 6. PLANNED DEVELOPMENT ZONING DISTRICTS

#### *Subdivision I. Generally*

#### **Sec. 34-931. Purpose and effect.**

(a) **Purpose.** The general purpose of planned development zoning districts is to provide a degree of flexibility for a landowner to propose the development of land in a manner that differs from the specific provisions of this code, and to allow the town council the ability to evaluate such a proposal relative to specific conditions on and around the site and as to its compliance with the Fort Myers Beach Comprehensive Plan.

(b) **Effect.** A planned development, once approved through the rezoning process, can only be developed in accordance with the specific master concept plan and special conditions that are contained in the zoning resolution approving the planned development. See §§ 34-217–220 for details on the effect of planned development zoning.

#### **Sec. 34-932. Regulation of land use in planned developments.**

(a) **General requirements and special conditions.** All uses of land, water, and structures permitted in a planned development shall be subject to:

- (1) the general requirements for planned developments,
- (2) all applicable regulations in this code, except where approval is granted to deviate from one or more of those regulations,
- (3) an adopted master concept plan, and
- (4) various special conditions which may be formulated and applied to address unique aspects of the parcel in the protection of a bona fide public interest:
  - a. The source of such conditions may include good planning practice as well as those specifications set forth in the application documents, plus policies and standards set forth in the Fort Myers Beach Comprehensive Plan.

- b. All special conditions shall be reasonably related to the proposed development and to any reasonably expected impacts on public services and facilities and the public safety, health, and general welfare.
- c. Special conditions shall be adopted as part of the zoning resolution approving the planned development.

(b) **Deviations.** To allow design flexibility in developing land, deviations from specific provisions of this code may be permitted where it can be demonstrated that the planned development will be enhanced and that the intent of such regulations to protect health, safety, and welfare will be served. Other portions of this code may provide additional criteria for certain deviations (for example, see § 34-992(e) regarding deviations from commercial design standards). No deviation may be granted that is inconsistent with the comprehensive plan.

- (1) Requested deviations shall be set forth on the master concept plan or in the application and shall be accompanied by documentation including sample detail drawings.
- (2) Approved deviations shall be adopted as part of the zoning resolution approving the planned development.

(c) **Density or intensity of use.** Density or intensity of use permitted in any planned development shall be determined by the town council in the zoning resolution in accordance with the following:

- (1) The density or intensity of the uses permitted or encouraged under the Fort Myers Beach Comprehensive Plan at that location, and
- (2) The nature of and the density and intensity of existing or proposed development surrounding the project.

(d) **Phasing.** The town council may specify a phasing plan in the resolution in accordance with § 34-220.

(e) **Other requirements for planned developments.**

- (1) Specific application requirements for planned development zoning districts are set forth in § 34-212–215.

## Planned Development Zoning Districts

- (2) Procedures to amend a planned development zoning district are set forth in § 34-214 and 34-219.
- (3) Other requirements for planned developments are found in §§ 34-211–410.

### **Sec. 34-933. Allowable uses of land.**

(a) Proposed principal and accessory land uses must be listed on the proposed master concept plan, identifying such uses by citing the same uses allowed by a specific zoning district, or by citing the enumerated uses of one or more use groups or sub-groups as found in Tables 34-1 and 34-2 of this article. Approved planned developments that used a different method for enumerating uses shall be interpreted in accordance with the use regulations in effect at the time of that approval.

(b) Approved uses shall be adopted as part of the zoning resolution approving the planned development. Uses that are not specifically listed may also be permitted if, in the opinion of the director, the uses and their expected impacts are substantially similar to an approved use.

**Secs. 34-934--34-940. Reserved.**

### ***Subdivision II. RPD (Residential Planned Development) Zoning District***

#### **Sec. 34-941. Intent of RPD (Residential Planned Development) zoning district.**

The intent of the RPD district is to allow a landowner the ability to submit a specific proposal for a land development that is primarily residential in character and that complies with the Fort Myers Beach comprehensive plan, but which does not meet the specific requirements of a conventional or redevelopment zoning district.

#### **Sec. 34-942. Allowable uses of land.**

Allowable principal and accessory land uses in an RPD zoning district shall be established in each zoning resolution in accordance with § 34-933. Certain of the use sub-groups enumerated in Table

34-1 are not available in RPD zoning districts; see footnotes under Table 34-2.

#### **Sec. 34-943. Building placement, size, design, and other property development regulations.**

Building placement, size, design, and all other property development regulations in an RPD zoning district shall be the same as for the RM zoning district, unless the zoning resolution specifies otherwise. Exceptions are as follows:

- (1) Compliance with the master concept plan and any special conditions may provide additional restrictions.
- (2) Approved deviations may modify or eliminate restrictions that would otherwise apply.

**Sec. 34-944–34-950. Reserved.**

### ***Subdivision III. CPD (Commercial Planned Development) Zoning District***

#### **Sec. 34-951. Intent of CPD (Commercial Planned Development) zoning district.**

The intent of the CPD district is to allow a landowner the ability to submit a specific proposal for a land development that is primarily non-residential or mixed-use in character and that complies with the Fort Myers Beach comprehensive plan, but which does not meet all of the specific requirements of a conventional or redevelopment zoning district.

#### **Sec. 34-952. Allowable uses of land.**

Allowable principal and accessory land uses in a CPD zoning district shall be established in each zoning resolution in accordance with § 34-933.

#### **Sec. 34-953. Building placement, size, design, and other property development regulations.**

Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging, or for

## Planned Development Zoning Districts

the CB zoning district for all other CPDs, unless the zoning resolution specifies otherwise. Exceptions are as follows:

- (1) Compliance with the master concept plan and any special conditions may provide additional restrictions.
- (2) Approved deviations may modify or eliminate restrictions that would otherwise apply.

restrictions previously authorized by PUD zoning resolutions remain in full force and effect after the conversion to CPD zoning.

**Secs. 34-963–34-990. Reserved.**

### **Sec. 34-954. Commercial design standards.**

The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings or portions thereof that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405, on properties that are zoned CPD (commercial planned development).

**Secs. 34-955–34-960. Reserved.**

### ***Subdivision IV. Former MPD (Mixed-Use Planned Development) Zoning District***

#### **Sec. 34-961. Former MPD zoning district.**

The MPD (mixed-use planned development) zoning district had been assigned to certain developments which had received zoning approval prior to major amendments to this code. MPD zoning was automatically converted to CPD zoning through revisions to this chapter which became effective on March 3, 2003. All rights and restrictions previously authorized by MPD zoning resolutions remain in full force and effect after the conversion to CPD zoning.

#### **Sec. 34-962. Former PUD zoning district.**

The PUD (planned unit development) zoning district had been assigned to certain developments which had received preliminary or final approval as a planned unit development prior to 1985. PUD zoning was automatically converted to CPD zoning through revisions to this chapter which became effective on March 3, 2003. All rights and

## Commercial Design Standards

### DIVISION 7. COMMERCIAL DESIGN STANDARDS

#### Sec. 34-991. Purpose and intent.

The purposes of design regulations for commercial buildings include:

- (1) Encouraging traditional building forms that reinforce the pedestrian orientation and desired visual quality of the Town of Fort Myers Beach.
- (2) Creating usable outdoor space through the arrangement of compatible commercial buildings along street frontages.
- (3) Encouraging buildings of compatible type and scale to have creative ornamentation using varied architectural styles.
- (4) Enhancing the town's business districts as attractive destinations for recreation, entertainment, and shopping.
- (5) Maintaining and enhancing the town's sense of place and its property values.
- (6) Implementing the design concepts in the Fort Myers Beach Comprehensive Plan.

#### Sec. 34-992. Applicability and compliance.

(a) **Applicability.** Except where this code specifically provides otherwise, these commercial design standards apply to all commercial and mixed-use buildings or portions thereof that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405, on properties that are zoned in any of the following zoning districts:

- (1) SANTOS (§ 34-648);
- (2) DOWNTOWN (§ 34-671–680);
- (3) SANTINI (§ 34-681–690);
- (4) VILLAGE (§ 34-691–700);
- (5) CB (§ 34-701–710); and
- (6) CPD (commercial planned development) (§ 34-951–960).

(b) Commercial buildings on properties with a zoning resolution that incorporated specific architectural elevations shall be required to comply with these standards to the extent that the standards are not inconsistent with the approved elevations.

(c) Commercial buildings such as hotels that will not contain commercial uses below base flood elevation shall not be required to comply with the ground-floor window and retail standards except along Old San Carlos Boulevard (see § 34-676(b)(2)). However, the principal facades of these buildings must screen underbuilding parking areas in a manner acceptable to the town manager or designee.

(d) **Compliance determinations.** Compliance with these standards shall be determined as follows:

- (1) An applicant may seek conceptual or final approval of a specific building and site design during the commercial planned development rezoning process (see § 34-931). The resolution approving a commercial planned development may include specific site plans and building elevations and shall specify the extent to which these plans and elevations have or have not been determined to meet these commercial design standards and whether any deviations to these standards have been granted.
- (2) Unless final approval has been granted pursuant to subsection (1), the town manager shall make a determination of substantial compliance with these standards before a development order can be issued pursuant to ch. 10 of this code, or before a building permit can be issued if a development order is not applicable.
  - a. Compliance determinations of the town manager are administrative decisions which may be appealed in accordance with article II of this chapter.
  - b. The town manager shall provide written notice of each compliance determination to the town council within five calendar days. The town council, by majority vote at a public meeting within 30 days of the compliance determination, may file an appeal that will be heard by the town council in conformance with the procedures and standards in § 34-86.
  - c. Compliance determinations made by the town manager shall not become effective until the 30-day appeal period has passed without an appeal having been filed.

## Commercial Design Standards

(e) ***Variances and deviations.*** Requests to vary from a substantive provision of these standards may be filed using the variance procedures and evaluated using the findings in § 34-87, or may be requested during planned development rezonings as a deviation as described in § 34-932(b). The following are acceptable justifications for deviations from these commercial design standards (in addition to the general requirements of § 34-932(b)):

- (1) The proposed substitution of materials or function accomplishes substantially the same goals as the required provisions in these standards and would make an equal or greater contribution to the public realm of the Town of Fort Myers Beach; or
- (2) The proposed building is a civic building, which is expected to be more visually prominent than a typical commercial building.

### Sec. 34-993. Definitions.

*Arcade* means a series of columns topped by arches that support a permanent roof over a sidewalk.

*Awning* means a flexible roof-like cover that extends out from an exterior wall and shields a window, doorway, sidewalk, or other space below from the elements.

*Balcony* means an open portion of an upper floor extending beyond (or indented into) a building's exterior wall.

*Bay window* means a series of windows which project beyond the wall of a building to form an alcove within.

*Canopy* means an awning-like projection from a wall that is made of rigid materials and is permanently attached to the principal facade of a building.

*Civic building* means a building that is allowed greater design flexibility due the prominence of its function and often its location. For purposes of these standards, civic buildings include buildings operated by governmental entities and certain privately

owned buildings that serve religious, charitable, cultural, educational, or other public purposes.

*Colonnade* is similar to an arcade except that it is supported by vertical columns without arches.

*Commercial building* means, for purposes of these standards, any building used in whole or in part for any of the following uses: retail, office, hotel or motel rooms, institutional uses, commercial storage, restaurants, bars, and similar uses.

*Cornice* means a decorative horizontal feature that projects outward near the top of an exterior wall.

*Courtyard* means an unroofed area surrounded by buildings.

*Expression line* means a decorative horizontal feature that projects outward from an exterior wall to delineate the top of the first story of a building.

*Facade, principal* means the exterior wall of a building that is roughly parallel to a right-of-way or which faces a plaza or public park, and also that portion of a building's side wall that faces a pedestrian way or parking lot. Along the east side of Old San Carlos Boulevard only, the rear wall of buildings shall also be considered a principal facade whenever it is visible from the Matanzas Pass sky bridge.

*Lintel* means a structural or merely decorative horizontal member spanning a window opening.

*Plaza* means an unroofed public open space designed for pedestrians that is open to public sidewalks on at least one side.

*Porch* means a covered entrance to a building.

*Sill* means is a piece of wood, stone, concrete, or similar material protruding from the bottom of a window frame.

*Stoop* means a small elevated entrance platform or staircase leading to the entrance of a building.



## Commercial Design Standards

### Sec. 34-994. Exterior walls.

(a) **Generally.** These standards require commercial buildings to have traditional pedestrian-oriented exteriors and to be clad with typical Florida building materials that are durable and appropriate to the visual environment and climate. Design flexibility and creativity is encouraged using ornamentation from a wide variety of architectural styles.

(b) **Finish materials for walls.** Exterior walls are the most visible part of most buildings. Their exterior finishes shall be as follows:

- (1) Any of the following materials may be used for exterior walls and for columns, arches, and piers:
  - a. Concrete block with stucco (CBS)
  - b. Reinforced concrete (with smooth finish or with stucco)
  - c. Natural stone or brick
  - d. Wood, pressure-treated or naturally decay-resistant species
- (2) Exterior walls may also be covered with fiber-reinforced cement panels or boards, or with cast (simulated) stone or brick.
- (3) Synthetic stucco (an exterior cladding system with a stucco-like outer finish applied over insulating boards) may be used as an exterior wall covering except on principal facades.
- (4) Other materials for exterior walls may be used only if approved as a deviation from this section through the planned development rezoning process or when explicit approval has been granted to vary from these regulations (see § 34-992).
- (5) Fastenings that are required to dry-floodproof the first story of commercial buildings shall be integrated into the design of principal facades or be visually unobtrusive.

(c) **Types of exterior walls.** Principal facades are defined in § 34-993 and their requirements are described in § 34-995. Exterior walls that are *not* defined as principal facades require a lesser degree of finish and transparency, but must meet the following requirements:

- (1) Transparent windows must cover at least 30% of the wall area below the expression line and at least 10% of the wall area between the expression line and the cornice. These

requirements shall not apply to walls facing and roughly parallel to rear lot lines, or to side walls being built closer than 5 feet to a side lot line if the adjoining lot also has a building with a side wall closer than 5 feet to the same side lot line. However, some rear and side walls qualify as principal facades in accordance with § 34-993 and must meet the more stringent requirements of § 34-995.

- (2) All windows must have their glazing set back at least 3 inches from the surface plane of the wall, or set back at least 2 inches when wood frame construction is used.
- (3) Rectangular window openings shall be oriented vertically (except for transom windows).

### Sec. 34-995. Principal facade walls.

(a) **Facade elements.** Principal facades are the primary faces of buildings. Being in full public view, they shall be given special architectural treatment.

- (1) All principal facades shall have a prominent cornice and expression line, a working entrance, and windows (except for side-wall facades where entrances are not required).

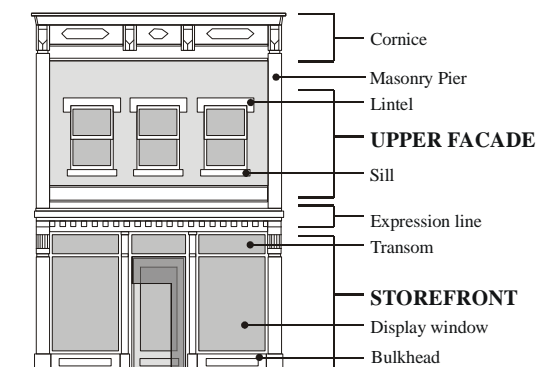


Figure 34-19

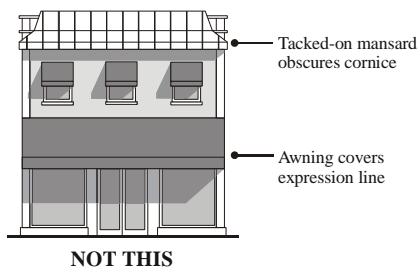
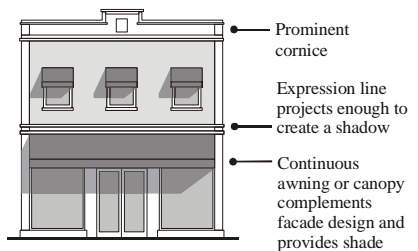
- (2) Buildings wider than 75 feet shall incorporate vertical elements in the principal facade to mimic smaller-scale development.
- (3) Principal facades facing a primary street, plaza, or public park may not have blank walls (without doors or windows) greater than 10 feet in length.
- (4) Expression lines and cornices shall be a decorative molding or jog in the surface plane of the building that extend at least 3 inches out from the principal facade, or a permanent canopy may serve as an expression line.

## Commercial Design Standards

- (5) Awnings may not hide or substitute for required features such as expression lines and cornices.
- (6) Entrances and windows are addressed in subsections (b) and (c) below.

(b) **Entrances.** A primary entrance and views into the first floor of commercial buildings are fundamental to creating an interesting and safe pedestrian environment.

- (1) The primary entrance to all buildings shall face the street.
- (2) Corner buildings shall have their primary entrance face either the intersection or the street of greater importance.
- (3) Additional ground floor retail spaces within the same building shall all have their respective primary entrances face streets unless the retail spaces do not adjoin an exterior wall along a street.
- (4) Where building frontages exceed 50 feet, operable doors or entrances with public access shall be provided along streets at intervals averaging no greater than 50 feet.



*Figure 34-20*

(c) **Windows.** Every principal facade must contain transparent windows on each story.

- (1) **All windows.**
  - a. Rectangular window openings on principal facades shall be oriented vertically (except for transom windows).
  - b. All windows must:
    1. contain visible sills and lintels on the exterior of the wall, and

2. have their glazing set back at least 3 inches from the surface plane of the wall, or set back at least 2 inches when wood frame construction is used.

- c. Glass in windows and doors, whether integrally tinted or with applied film, must transmit at least 50% of visible daylight.
- d. See § 34-995(e)(1) regarding awnings.

- (2) **First-story windows.** In order to provide clear views inward and to provide natural surveillance of exterior spaces, the first story of every commercial building's principal facade shall have transparent windows meeting the following requirements:
  - a. Window openings shall cover at least 60% of the wall area below the expression line;
  - b. The bottoms of the window opening can be no higher than 30 inches from sidewalk level; and
  - c. These windows shall be maintained so that they provide continuous view of interior spaces lit from within. Private interior spaces such as offices may use operable interior blinds for privacy.

(3) **Upper-story windows.**

- a. All stories above the first story of every commercial building's principal facade shall contain between 15% and 75% of the wall area with transparent windows.
- b. No single pane of glass may exceed 36 square feet in area.

(d) **Corner buildings.** For buildings located at the intersection of two streets, the corner of the building at the intersection may be angled, curved, or chamfered. The distance from the corner shall not exceed 20 feet measured from the intersection of the right-of-way lines to the end of the angled or curved wall segment, unless a greater amount is required by the visibility triangles in § 34-662(b)(4).

(e) **Facade projections.** Facade projections add visual interest to buildings. Some projections also provide protection from sun and rain for those passing by, others provide additional floor space for the building. The following types of facade projections are permitted as indicated below. At least one of these facade projections is required on each principal facade of all commercial buildings. Along both sides of Old San Carlos Boulevard, a continuous awning or canopy is required over the sidewalk except where the sidewalk is being shaded by an arcade or colonnade.

## Commercial Design Standards

### (1) Awnings and canopies:

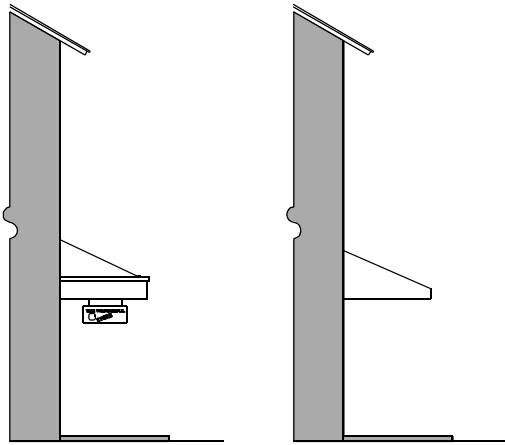


Figure 34-21

- a. Awnings and canopies may extend forward of the build-to line (see § 34-662) and may encroach into a street right-of-way.
- b. Awning or canopies extending from the first story cannot exceed the following dimensions:
  1. Depth: 5 feet (minimum) and strongly overlapping the sidewalk, but no closer than 2 feet to an existing or planned curb (see § 34-995(e) regarding Old San Carlos Boulevard)
  2. Height: the lowest point on an awning or canopy shall be between 9 feet and 12 feet above sidewalk level
  3. Length: 25% to 100% of the front of the building
- c. There are no minimum or maximum dimensions for awnings or canopies extending from a second story or higher.
- d. Awnings shall be covered with fabric. High-gloss or plasticized fabrics are prohibited. Backlighting of awnings is prohibited.

### (2) Balconies:

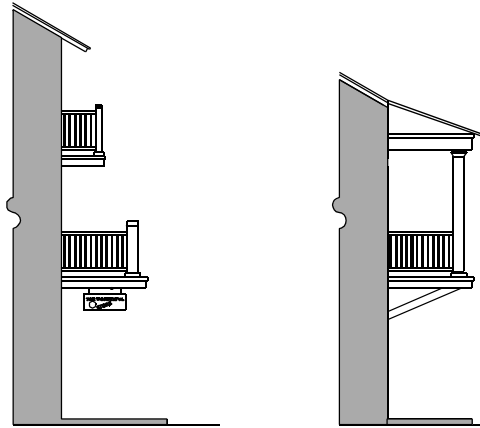


Figure 34-22

- a. Balconies may extend forward of the build-to line (see § 34-662) and may encroach into a street right-of-way.
- b. Balconies cannot exceed the following dimensions:
  1. Depth: 6 feet minimum for second story balconies; and no closer than 2 feet to the existing or planned curb
  2. Height: 10 feet minimum if overhanging a sidewalk
  3. Length: 25% to 100% of the front of the building
  4. Top of railing: 2-3/4" minimum
- c. Balconies may have roofs, but are required to be open, un-airconditioned parts of the buildings.
- d. On corners, balconies may wrap around to the side of the building.

### (3) Bay windows:

- a. Bay windows may extend forward of the build-to line (see § 34-662) but may not encroach into a street right-of-way.
- b. Awning or canopies extending from the first story cannot exceed the following dimensions:
  1. Depth: 3 feet (minimum)
  2. Height: 10 feet minimum above sidewalk
  3. Length: 6 feet minimum
- c. Bay windows shall have the same details required for principal facades: sills, lintels, cornices, and expression lines.

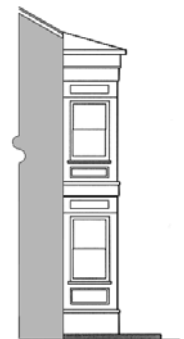


Figure 34-23

## Commercial Design Standards

### (4) Porches:

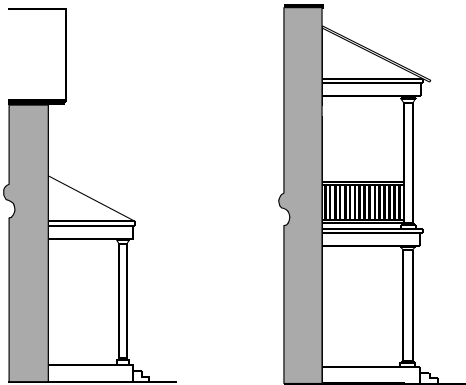


Figure 34-24

- a. Front porches may extend forward of the build-to line (see § 34-662) but may not encroach into a street right-of-way.
- b. Front porches cannot exceed the following dimensions:
  1. Depth: 8 feet (minimum)
  2. Length: 25% to 90% of the front of the building; however, no more than 25% of the floor area of a porch shall be screened if the porch extends forward of the build-to line.
  3. Top of railing: 2-3/4" minimum
- c. Front porches may have multi-story verandas and/or balconies above.
- d. Front porches are required to be open, un-airconditioned parts of a building.

### (5) Stoops:

- a. Stoops may extend forward of the build-to line (see § 34-662) but may not encroach into a street right-of-way or sidewalk without specific approval by the town.
- b. Stoops cannot exceed the following dimensions:
  1. Depth: 6 feet (minimum)
  2. Length: 5 feet (minimum)
- c. Stoops may be roofed or unroofed but may not be screened or otherwise enclosed.

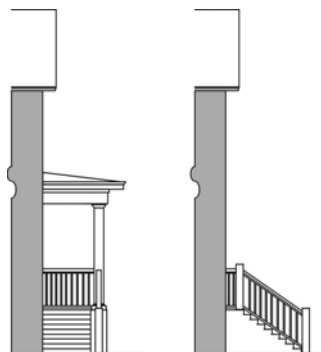


Figure 34-26

### (6) Arcades and colonnades:

- a. Arcades and colonnades may extend

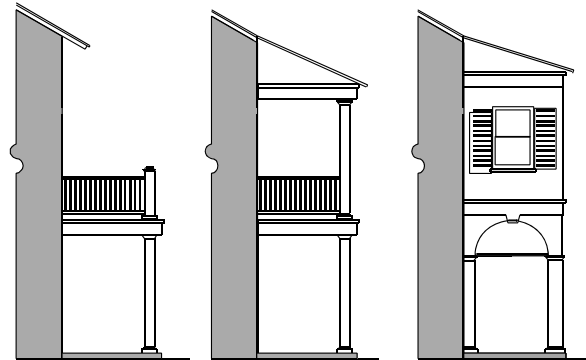


Figure 34-27

- forward of the build-to line (see § 34-662) and may encroach into a street right-of-way if explicit permission is granted by the town.
- b. Arcades and colonnades cannot exceed the following dimensions:
  1. Depth: 7 feet minimum from the building front to the inside face of the column
  2. No part of the column shall be closer than 2 feet to the existing or planned curb
  3. Height: 10 feet minimum above sidewalk
  4. Length: 75% to 100% of the front of the building
  5. Top of porch railing: 2-3/4" minimum
- c. Open multi-story verandas, awnings, balconies, and enclosed useable space can be constructed above the colonnade.
- d. Arcades and colonnades shall only be constructed where the minimum depth can be obtained.
- e. On corners, arcades and colonnades may wrap around to the side of the building.
- f. Columns shall be spaced no farther apart than they are tall.
- g. Minimum column dimensions with enclosed space above shall be 8 inches.
- h. Minimum column dimension without enclosed space above:
  1. Rectangular columns: 6 inches
  2. Round columns: 6 inches in diameter

## Commercial Design Standards

### Sec. 34-996. Roofs.

#### (a) *Definitions.*

*Dormer* means a projection from a sloping roof that contains a window and its own roof.

*Gable roof* means a ridged roof forming a gable at both ends.

*Hip roof* means a roof with pitched ends and sides.

*Mansard roof* means a roof having two slopes with the lower slope steeper than the upper, or a single steep slope topped with a flat roof, enclosing the building's top floor. A modern variant is a partial sloped roof that is attached near the top of an exterior wall in place of a traditional cornice or parapet, creating the visual effect of a sloped roof on a flat-roofed building but without enclosing any floor space.

*Parapet* means a short vertical extension of a wall that rises above roof level, hiding the roof's edge and any roof-mounted mechanical equipment.

*Shed roof* means a pitched roof that has only one slope.

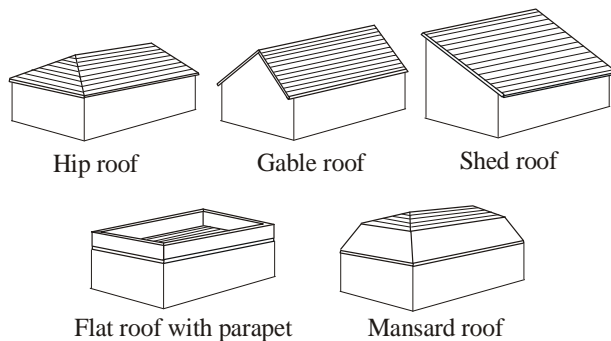


Figure 34-28

(b) **Roof types permitted.** Commercial buildings may have any of the following roof types: hip roofs, gable roofs, shed roofs, flat roofs with parapets, or mansard roofs.

- (1) All flat roofs, and any shed roof with a slope of less than 2 inches vertical per 12 inches horizontal, must have their edges along all streets concealed with parapets.

- (2) All hip roofs and gable roofs, and any shed roof with a slope of more than 2 inches vertical per 12 inches horizontal, must have overhangs of at least 18 inches.
  - a. Exposed rafter ends (or tabs) are encouraged.
  - b. Wide overhangs are encouraged and can be supported with decorative brackets.
- (3) Mansard roofs are permitted only when the lowest sloped surface begins above a cornice line and then slopes upward and inward.
- (4) Small towers, cupolas, and widow's walks are encouraged (see § 34-631 for maximum dimensions).
- (5) Dormers are permitted and encouraged on sloped roofs.
- (6) Skylight glazing must be flat to the pitch of the roof if the skylight is visible from a primary street, plaza, or public park.

(c) **Roofing materials permitted.** Commercial building roofs may be constructed with one or more of the following roofing materials:

- (1) **METAL:**
  - a. Steel (galvanized, enameled, or terne-coated)
  - b. Stainless steel
  - c. Copper
  - d. Aluminum
- (2) **SHINGLES:**
  - a. Asphalt (laminated dimensional shingles only)
  - b. Fiber-reinforced cement
  - c. Metal (same as (a)(1))
- (3) **TILES:**
  - a. Clay or terra cotta
  - b. Concrete
- (4) **FLAT ROOFS:**
  - a. Any materials allowed by applicable building codes
- (5) **GUTTERS AND DOWNSPOUTS:**
  - a. Metal (same as (c)(1))

(d) **Other roof types and materials.** Other types of roofs and roofing materials are prohibited unless explicitly approved in accordance with § 34-992.

## Commercial Design Standards

### Sec. 34-997. Plazas and courtyards.

(a) **Generally.** New commercial buildings are generally oriented to public sidewalks. This section addresses other public open spaces that also can affect the orientation of commercial buildings.

(b) **Plazas.** This code contains “build-to lines” (see § 34-662) that require new commercial buildings to be placed near public sidewalks. These build-to regulations allow up to 25% of a building’s frontage to be recessed 10 feet. Plazas meeting the following requirements are permitted to be recessed further than the standard 10 feet:

- (1) The plaza cannot exceed 25% of a building’s frontage.
- (2) The plaza is strictly for pedestrian usage and cannot be used to park vehicles.
- (3) All building walls that surround the plaza must meet the design criteria for principal facades.

(c) **Courtyards.** New commercial buildings that are on larger lots may include interior courtyards designed for public or private usage.

- (1) If vehicular circulation is allowed through a courtyard, the only parking permitted will be in parallel spaces.
- (2) Courtyards intended for public use are encouraged to have clear visual linkages between the courtyard and public sidewalks.

(d) **Pedestrian passages.** Pedestrian passages, with or without a lane for vehicles, can be provided on private property to connect a courtyard to the sidewalk system, to provide walkways to parking lots behind buildings, or to provide additional retail frontages.

### Secs. 34-998–1168. Reserved.

## ARTICLE IV. SUPPLEMENTAL REGULATIONS

### DIVISION 1. GENERALLY

#### Sec. 34-1169. Purpose and applicability of article.

The purpose of this article is to provide rules and regulations which supplement, modify, or further explain rules and regulations found elsewhere in this chapter, and, unless specifically noted to the contrary, the provisions of this article apply to all zoning districts.

#### Sec. 34-1170. Purpose of supplemental regulations.

(a) Regulations over and above those imposed by other sections of this chapter are necessary for certain uses which, because of their uniqueness or potential for substantial impact on surrounding land uses, warrant minimum standards which cannot properly be addressed in general provisions or property development regulations set forth in specific districts. The purpose of the supplemental regulations set forth in this article is to set forth the detailed regulations, including but not limited to the bulk, layout, yard size, and lot area, that apply to these uses.

(b) The supplemental regulations set out in this article shall apply to the specified use regardless of whether it is a use permitted by right, special exception, planned development rezoning, or temporary use permit, as specified in the district use regulations in division 2 of article III of this chapter.

## DIVISION 2. ACCESSORY USES, BUILDINGS, AND STRUCTURES

#### Sec. 34-1171. Applicability of division.

This division provides minimum regulations for those accessory uses, buildings, and structures customarily incidental and subordinate to the principal use or building, which are not specifically regulated elsewhere in this code.

#### Sec. 34-1172. Definitions.

For purposes of this division only, certain words or terms shall mean the following:

*Accessory use* means a use of a structure or premises which is customarily incidental and subordinate to the principal use of the structure or premises.

*Commercial accessory use* means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a commercial structure or premises. See *Use, principal*. Typical commercial accessory uses are: *Parking lots, accessory; Storage, indoor; and Telephone booth or pay telephone station*. Various divisions of article IV of this chapter describe permitted commercial accessory uses. Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not commercial accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2.

*Open-mesh screen* means meshed wire or cloth fabric to prevent insects from entering the facility, including the structural members framing the screening material.

*Residential accessory use* means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See *Use, principal*. Typical residential accessory uses are: carports and garages; decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863); fences and walls (division 17 in article IV); garage sales or yard sales (§ 34-2); recreation facilities, personal; seawalls (ch. 26); and storage sheds. Division 2 and other portions of

## Accessory Uses

article IV provide regulations for many residential accessory uses.

*Resort accessory use* means the use of a structure or premises that is customarily incidental and subordinate to a resort. See *Use, principal*. Typical resort accessory uses are: *Amusement devices* (§§ 34-2141–2145 and 34-3042); *Golf courses*; *Parasailing operations office* (ch. 27); *Personal watercraft operations office* (ch. 27); and *Rental of beach furniture* (ch. 14).

*Roofed* means any structure or building with a roof which is intended to be impervious to weather.

### Sec. 34-1173. Development regulations.

(a) Unless specifically indicated to the contrary, accessory uses and related buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use, provided that:

- (1) Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2. However, this limitation does not apply to uses that are explicitly listed in the definitions of residential, commercial, or resort accessory uses.
- (2) All uses, buildings, and structures must comply with all applicable development regulations and building codes.
- (3) Accessory buildings or structures may be built concurrently with a principal building or structure but, except as provided herein, no accessory use, building, or structure shall be commenced, erected, placed, or moved onto a lot or parcel prior to the principal use, building, or structure. Exceptions are as follows:
  - a. Fences or walls when in compliance with division 17 of this article.
  - b. Seawalls or retaining walls (see § 26-43(a)).

c. Docks accessory to residential uses (see § 26-43(a)). Only permitted if the lot meets the minimum lot size and dimensions required for a principal use.

(b) **Attachment to principal building.** Authorized accessory buildings or structures may be erected as part of the principal building or may be connected to it by a roofed porch, patio, or breezeway, or similar structure, or they may be completely detached, provided that:

- (1) Any accessory building or structure which is structurally a part of the principal building shall comply in all respects with the regulations for a principal building.
- (2) Any accessory building or structure not structurally made a part of the principal building shall comply with the location requirements set forth in § 34-1174.

### Sec. 34-1174. Location and setbacks generally.

(a) **Permitted locations.** Except as may be provided elsewhere in this chapter, all accessory uses, buildings, and structures must be located on the same premises and must have the same zoning district or zoning classification as the principal use (see also § 34-616(b)). For purposes of this section, a zoning classification contains the following groups of zoning districts:

- (1) Residential districts – RS, RC, RM, and SANTOS – described in article III of this chapter: and
- (2) Commercial districts – CR, CM, CO, and CB – described in article III of this chapter.

(b) **Setback from streets.** No accessory use, building, or structure shall be located closer to a street right-of-way line or street easement than the principal building, except for:

- (1) fences and walls as provided for in division 17,
- (2) signs, where permitted by ch. 30 and placed in accordance with §§ 30-93 and 30-153,
- (3) outdoor display of merchandise, subject to the provisions of division 36 of this article,
- (4) garbage enclosures as provided for in § 6-11,
- (5) a single flagpole on a lot,
- (6) swimming pools, tennis courts, shuffleboard courts, and other similar recreation facilities



## Accessory Uses

that are accessory to a multiple-family development, or a hotel/motel, provided that they are part of a planned development or a site plan approved in accordance with ch. 10 and provided they comply with the minimum setbacks for streets,

- (7) as provided for in the exceptions to setbacks in § 34-638(d), or
- (8) on through lots, accessory uses, buildings, and structures may be placed closer to the street opposite the street that provides principal vehicular access than the principal building as long as the minimum setbacks for streets as set forth in § 34-638 are maintained.

(c) **Setback from bodies of water.** No building or structure (except marine structures, which are subject to the setback requirements as set forth in ch. 26, article II) may be located closer to a bay, canal, or other body of water than the minimum setbacks required in § 34-638(d)(3).

(d) **Setbacks from side and rear property lines.** Unless the side or rear property line abuts a body of water (see § 34-638(d)), the following setbacks shall apply:

- (1) **Residential accessory buildings and structures.** Except as provided in §§ 34-1175 and 34-1176, all accessory residential buildings and structures shall be set back a minimum of:
  - a. Five feet from any rear property line that does not have access to an alley.
  - b. Zero feet from any rear property line that is served by an alley.
  - b. For non-waterfront lots, five feet from any side property line.
  - c. For waterfront lots, the same distance as is required from any side property line for principal buildings in that zoning district (see § 34-638).
- (2) **Commercial and resort accessory buildings and structures.** All accessory buildings and structures for a principal commercial or resort use shall be set back:
  - a. In accordance with the side and rear setback requirements for a principal building in that zoning district or the

minimum buffering requirements as set forth in ch. 10, whichever is greater, when abutting any district other than commercial or resort.

- b. When abutting another commercial or resort zoning district:
  - 1. Rear setbacks are not required.
  - 2. For non-waterfront lots, side setbacks are not required.
  - 3. For waterfront lots, the same distance as is required from any side property line for principal buildings in that zoning district (see § 34-638).

(e) **Administrative setback variances.** Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.

(f) **Prohibited locations.** Nothing contained in this chapter shall be construed as permitting placement of any accessory building or structure within a utility or other easement prohibiting such building or structure, or closer to adjacent property than permitted by the minimum buffer requirements set forth in ch. 10, or closer to any other building than permitted by the town building code.

(g) **Fences.** Fences are subject to the setback requirements in division 17 of this chapter.

### **Sec. 34-1175. Satellite dishes and amateur radio antenna/towers.**

(a) **Satellite dishes.** The following restrictions apply to satellite dishes that are installed as accessory structures if the dishes exceed two meters (78.74 inches) in diameter in zoning districts that allow Retail/Open or Lodging/Open land use sub-groups (see Table 34-2) or if the dishes exceed one meter (39.97 inches) in diameter in all other zoning districts.

- (1) **Setbacks.** Satellite dishes must meet the minimum requirements for accessory structures in § 34-1174(b)–(d).
- (2) **Allowable size.** No satellite dish may exceed ten feet in diameter.

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(3) **Location and placement.**

- a. Except as provided below, satellite dishes may not be mounted on a roof or on any other building surface.
- b. *Exception.* Satellite dishes may be mounted on buildings that exceed 35 feet in height (as measured in accordance with § 34-631(b)), provided the satellite dish is not visible at ground level from any abutting right-of-way, street easement, or any property under separate ownership and zoned or used for residential purposes.

(4) **Height.** Ground-mounted satellite dishes may not exceed ten feet in height.

(5) **Landscaping.** Ground-mounted satellite dishes exceeding two meters (78.74 inches) in diameter must include a landscaped buffer of at least three feet in width between the facility and any right-of-way or ingress/egress or access easement. The buffer must be at least four feet in height at installation and be maintained at a minimum of five feet in height within one year after time of planting.

(6) **Administrative variances.** The director may modify requirements of subsection (a) where an applicant can demonstrate in writing that full compliance with these provisions will materially limit transmission or reception with the proposed satellite dish. See § 34-268. The director may not modify any requirement to a greater extent than is required to ensure that transmission or reception is not materially limited.

(b) **Amateur radio antenna/towers.**

- (1) Amateur radio antenna/towers up to 50 feet in height are permitted in all zoning districts provided that antenna/tower supports and peripheral anchors are located entirely within the boundaries of the property and in the rear or side yard.
- (2) Amateur radio antenna/towers over 50 feet in height may be permitted by special exception in any zoning district.

**Sec. 34-1176. Swimming pools, tennis courts, porches, decks, and similar recreation facilities.**

(a) **Applicability.** The regulations set out in this section apply to all swimming pools, tennis courts, shuffleboard courts, porches, decks, and other similar recreation facilities which are accessory to a permitted use, and which are not specifically regulated elsewhere in this chapter.

(b) **Location and setbacks.**

(1) **Personal, private, and limited facilities.**

- a. *Nonroofed facilities.* All swimming pools, tennis courts, decks, and other similar nonroofed accessory facilities shall comply with the following setback requirements:

1. Street setbacks as set forth in §§ 34-1174(b) and 34-638.
2. Water setbacks as set forth in § 34-638(d)(3).
3. Rear lot line setback as set forth in § 34-1174(d).
4. Side lot line setbacks as set forth in § 34-1174(d).

- b. *Open-mesh screen enclosures.* Swimming pools, patios, decks, and other similar recreation facilities may be enclosed with an open-mesh screen enclosure provided that the enclosure complies with the setback requirements set forth in § 34-1174, and provided further that:

1. At least three sides of the enclosure are open-mesh screening from a height of 3½ feet above grade to the top of the enclosure.
2. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with all setbacks required for a principal building.

It shall be the responsibility of the applicant to increase all required setbacks sufficient to provide maintenance access around the pool whenever the pool is proposed to be enclosed with open-mesh screening or fencing. A minimum increase in setbacks of three feet is recommended.

- c. *Roofed open-mesh enclosures.* Open-mesh screen enclosures may be covered by a solid roof (impervious to weather) provided that:

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1. If structurally part of the principal building, the enclosure shall comply with all setback requirements for the principal building.
  2. Except when in compliance with the setback requirements for principal buildings, a solid roof over a screen enclosure shall be constructed as a flat roof with the pitch no greater than the minimum required for rain runoff.
- (2) **Commercial and public facilities.** All pools, tennis courts, and other similar recreation facilities owned or operated as a commercial or public establishment shall comply with the setback regulations for the zoning district in which located.
- (c) **Fencing.**
- (1) *In-ground swimming pools, hot tubs, and spas.* Every swimming pool, hot tub, spa, or similar facility shall be enclosed by a fence, wall, screen enclosure or other structure, not less than four feet in height, constructed or installed so as to prevent unauthorized access to the pool by persons not residing on the property. For purposes of this subsection, the height of the structure shall be measured from the ground level outside of the area so enclosed. The enclosure may be permitted to contain gates, provided they are self-closing and self-latching.
  - (2) *Aboveground swimming pools, hot tubs, and spas.* Aboveground pools, hot tubs, spas, and similar facilities shall fulfill either the enclosure requirements for in-ground pools or shall be so constructed that the lowest entry point (other than a ladder or ramp) is a minimum of four feet above ground level. A ladder or ramp providing access shall be constructed or installed so as to prevent unauthorized use.
  - (3) *Exception.* A spa, hot tub, or other similar facility which has a solid cover (not a floating blanket) which prevents access to the facility when not in use shall be permitted in lieu of fencing or enclosure requirements.
  - (4) *Tennis courts.* Fences used to enclose tennis courts shall not exceed 12 feet in height above the playing surface.
- (d) **Lighting.** Lighting used to illuminate a swimming pool, tennis court, or other recreation facility shall be directed away from adjacent properties and streets, and shall shine only on the subject site.
- (e) **Commercial use.** No swimming pool, tennis court, or other recreation facility permitted as a residential accessory use shall be operated as a business.

## Accessory Uses

### Sec. 34-1177. Accessory apartments not requiring owner-occupancy on the premises.

(a) **Applicability.** This section sets forth the requirements for accessory apartments on larger lots, when subordinate to a single-family detached dwelling unit, with no requirement that the property owner live on the premises. If a property owner lives on the premises, an existing accessory apartment that does not meet the requirements of this section may be legal under the provisions of § 34-1178. The requirements of this section apply to accessory apartments whether they are listed as a permitted use or a use by special exception.

(b) **Definition.** For purposes of this section, the term “accessory apartment” means a dwelling unit, with or without cooking facilities, constructed subordinate to a single-family dwelling unit that could be made available for rent or lease.

(c) **Off-street parking.** In addition to the requirements of § 34-2020(d)(1), one additional space shall be required for the accessory apartment.

(d) **Maximum floor area; use; floodplain regulations.**

- (1) **Attached apartments.** If the accessory apartment is constructed as part of the principal building, the maximum floor area of the accessory apartment shall not exceed 50 percent of the floor area of the main dwelling unit.
- (2) **Detached apartments.** If the accessory apartment is not constructed as part of the main dwelling unit, the maximum floor area shall be 850 square feet or 50 percent of the floor area of the main dwelling unit, whichever is less.
- (3) **Use.** The accessory apartment shall be limited to one family, as defined in this chapter.
- (4) **Floodplain and other regulations.** Nothing in this section shall be construed to waive the floodplain regulations in ch. 6, article IV or other regulations in this code, except as explicitly set forth.

(e) **Minimum lot size.** An accessory apartment may be permitted on a lawfully existing lot which conforms to the minimum lot size of the district in which it is located. However, in no case shall the lot area be less than 6,000 square feet.

(f) **Appearance.** The entrance to the accessory apartment, when constructed as part of the principal residence, should be designed in such a manner as to retain the appearance of a single-family residence.

(g) **Density.** An accessory apartment, for the purposes of this section, is termed a dwelling unit and the resulting density must comply with the Fort Myers Beach Comprehensive Plan.

### Sec. 34-1178. Accessory apartments in owner-occupied homes.

(a) **Purpose.** The purpose of this section is to recognize and legalize certain existing accessory apartments where the immediate presence of a property owner is presumed to mitigate any negative effects that might result from the use or rental of such apartments.

(b) **Applicability.** This section sets forth special requirements for a single accessory apartment in an owner-occupied home. Nothing in this section authorizes or legalizes any construction that is not allowed by the flood-hazard regulations found in §§ 6-401 through 6-475 of this code.

(c) **Definition.** For purposes of this section, the term “accessory apartment” means a single living unit no larger than 850 square feet, with or without cooking facilities, that was in existence as of December 15, 1997. For such an accessory apartment to remain lawful under this section, the property owner or an immediate family member must be in residence on the premises, or on an immediately adjoining lot, during any period when the apartment is not vacant.

(d) **Density.** An accessory apartment that meets the requirements of this section is a living unit but not a dwelling unit as defined by the Fort Myers Beach Comprehensive Plan and is not counted in residential density computations (see § 34-632(5)b.).

**Sec. 34-1179. Trucks and commercial vehicles in residentially zoned districts.**

Except for daytime deliveries or service calls, the following types of trucks or commercial vehicles may not be parked or stored on any lot in a conventional or redevelopment zoning district. Planned development zoning districts may allow the parking of these trucks if explicitly permitted by its zoning resolution:

- (1) A tractor-trailer or semi-trailer truck; or
- (2) A truck with two or more rear axles; or
- (3) A truck with a gross vehicle weight rating (GVWR) in excess of 12,000 pounds; or
- (4) Any truck and trailer combination resulting in a combined gross vehicle weight rating (GVWR) in excess of 12,000 pounds.

**Secs. 34-1180--34-1200. Reserved.**

**DIVISION 3.  
SEXUALLY-ORIENTED BUSINESSES**

**Sec. 34-1201. Applicability of division.**

This division shall apply to all sexually-oriented businesses (as defined in the Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04).

**Sec. 34-1202. Definitions.**

*Sexually-oriented business* means a sexually-oriented business as defined in the Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04.

**Sec. 34-1203. Purpose of division.**

The purpose of this division is to provide reasonable regulations to alleviate the adverse effects of sexually-oriented businesses on adjacent and nearby uses of land.

**Sec. 34-1204. Prohibited locations.**

No use of land for purposes governed by this division shall be located closer than 1,000 feet, measured on a straight line, from:

- (1) The closest wall of any building containing a similar use; or

- (2) Any district which allows residential uses; or
- (3) Any hotel, motel, restaurant, school (noncommercial), day care center (child), park, playground, place of worship, religious facility, public recreation facility, or cultural facility.

**Secs. 34-1205--34-1230. Reserved.**

**DIVISION 4.  
AIRCRAFT**

**Sec. 34-1231. Use of engine-propelled aircraft.**

(a) No person shall take off or land any aircraft that is propelled by an engine within the limits of the Town of Fort Myers Beach unless the aircraft is registered with the Federal Aviation Administration or an aircraft owned by a governmental agency.

(b) In accordance with FAA requirements, no aircraft, as defined in subsection (a), shall fly over the land of the Town of Fort Myers Beach.

**Secs. 34-1232--34-1260. Reserved.**

## Alcoholic Beverages

### DIVISION 5. ALCOHOLIC BEVERAGES

#### Sec. 34-1261. Definitions.

For purposes of this division and when referred to elsewhere in this chapter, certain terms or phrases shall have the following meaning:

*Alcoholic beverage* means distilled spirits and all beverages, other than medicine, intended for human consumption and containing one-half of one percent or more alcohol by volume.

*Beer, wine, and liquor* have the same meanings as provided in F.S. chs. 563, 564, and 565, respectively.

*Full course meals* means items on a menu at a restaurant which include soups and salads, main dishes with side orders, and desserts.

*Kitchen, commercial* means a facility used for the preparation of food which is sold to the public and that is subject to state and local health department inspections.

*Liquor license* means a license issued by the state for the retail sale, service, and consumption of liquor.

*Park*, only when used in this division, means a park facility which is owned, leased, or operated by a governmental agency. It does not include beach access strips.

*Sale of*, only when used in this division, includes the term "or service."

#### Sec. 34-1262. Compliance with applicable regulations.

No structure, building, establishment, or premises shall be occupied, used, or maintained for the purpose of the retail sale, service, or consumption of alcoholic beverages except in conformity with all applicable town regulations, including this chapter, and with the applicable state regulations.

#### Sec. 34-1263. Sale for off-premises consumption.

(a) *Where permitted*. The sale of alcoholic beverages for consumption off the premises shall be allowed in any zoning district where retail stores are a permitted use, provided that package stores must meet the additional regulations set forth in subsection (d) of this section.

(b) *Sealed containers only*. Only alcoholic beverages in original factory-sealed containers shall be permitted to be sold for off-premises consumption.

(c) *State liquor laws*. Any establishment engaged in the sale of alcoholic beverages for consumption off-site shall be required to comply with all applicable state liquor laws.

(d) *Location of package stores*. No package store or other establishment *primarily* engaged in the retail sale of liquor for consumption off-site shall be permitted closer than 500 feet to any place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or 500 feet from any other establishment primarily engaged in the sale of alcoholic beverages.

- (1) For purposes of this subsection, the distance shall be measured in a straight line from any public entrance or exit of the establishment to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or any public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.
- (2) Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.
- (3) Notwithstanding subsection (d) (1) of this section, where a package store is located in a multiple-occupancy complex which is 25,000 square feet or greater in size, or in a retail sales establishment wherein the sale of alcoholic beverages for consumption off-site

## Alcoholic Beverages

is clearly incidental to other retail sales commodities, such as in a grocery store, supermarket, or drugstore, the separation requirements from any dwelling unit shall not apply.

- (4) In any planned development zoning district where the applicant is contemplating the sale of alcoholic beverages for consumption off the premises in an establishment which cannot meet the distance requirements set forth in subsection (d) of this section, the applicant shall request a deviation from the requirements of subsection (d).

### Sec. 34-1264. Sale or service for *on-premises* consumption.

(a) **Approval required.** The sale or service of alcoholic beverages for consumption on the premises shall not be permitted until such location has been approved by the town as follows:

- (1) **Administrative approval.** The director may administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses if the proposed use satisfies the requirements set forth in this division. When circumstances so warrant the director may determine that administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception. Such circumstances may include the previous denial of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the director shall not approve another request for consumption on the premises which could potentially violate the distance requirements. If the first building is completed within less than one year, and it can be shown the second use would not violate the prescribed distance requirements, the director may approve the second location subject to all other requirements contained in this division.

- a. *Bars or cocktail lounges* located in commercial zoning districts which permit bars or cocktail lounges, provided the

standards set forth in subsections (b)(1) and (3) of this section are met;

- b. *Charter, party fishing boat, or cruise ship*, provided the standards of section (b)(3) are met. The COP approval is specific to the charter, party fishing boat, or cruise ship operating from a specific location and does not run with the land nor is it transferable.
- c. *Clubs and membership organizations* located in commercial zoning districts, where permitted, provided the standards set forth in subsections (b)(2)d and (b)(3) of this section are met;
- d. *Cocktail lounges in golf course clubs*, provided the standards set forth in subsections (b)(2)c and (b)(3) of this section are met;
- e. *Hotels/motels*, provided the standards set forth in subsections (b)(2)b and (b)(3) of this section are met; and
- f. *Restaurants*, provided the standards set forth in subsections (b)(2)a and (b)(3) of this section are met.
- (2) **Special exception.**
- a. A special exception for consumption on the premises shall be required for:
1. Any establishment not covered by subsection (a)(1) of this section; or
  2. Any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages, except that a restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership.
- b. The burden of proof that the grant of the special exception will not have an adverse effect on surrounding properties lies with the applicant.
- c. A single special exception for consumption on the premises for a multiple-occupancy complex in a conventional zoning district shall be sufficient to permit consumption on the premises in every restaurant which exists or may be established within the multiple-occupancy complex.

## Alcoholic Beverages

### (3) ***Planned developments.***

- a. No administrative approval is necessary where an individual establishment or other facility proposing consumption on the premises is explicitly designated on the master concept plan and is included on the approved schedule of uses.
- b. If consumption on the premises is shown as a permitted use on the approved schedule of uses for a multiple-occupancy complex, no administrative approval for consumption on the premises shall be required for restaurants within the multiple-occupancy complex.
- c. Consumption on the premises for other uses within planned developments require administrative approval or a special exception.

### (b) ***Location; parking.***

#### (1) ***Prohibited locations.***

- a. Except as may be exempted in subsections (a)(1) or (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall be located within 500 feet of:
  1. A place of worship, religious facility, school (noncommercial), day care center (child), or park;
  2. A dwelling unit under separate ownership, except when approved as part of a planned development; or
  3. Another establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises, excluding those uses listed under subsection (b)(2) of this section.

Distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), dwelling unit, or park, or to the closest public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.

- b. Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship,

religious facility, school (noncommercial), day care center (child), park or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.

#### (2) ***Exceptions to location standards.*** Exceptions to location standards are as follows:

##### a. ***Restaurants***, provided:

1. The restaurant is in full compliance with state requirements;
2. The restaurant serves cooked, full-course meals, prepared daily on the premises; and
3. Only a service bar is used and the sale or service of alcoholic beverages is only to patrons ordering meals, or, if the restaurant contains a cocktail lounge for patrons waiting to be seated at dining tables, the lounge shall be located so that there is no indication from the outside of the structure that the cocktail lounge is within the building.
4. The other requirements of § 34-1264(k) shall be met.

##### b. ***Hotels/motels***:

1. The hotel/motel contains at least 100 guest rooms under the same roof and that bars or cocktail lounges are located within the hotel or motel and under the same roof; and
2. The exterior of the building must not have storefronts or give the appearance of commercial or mercantile activity visible from the street.

If the use contains windows visible from the street, the windows shall be of fixed, obscure glass. Access to the cocktail lounge or bar must be through the lobby. Additional entrances are not permitted unless the additional entrance or door opens into an enclosed courtyard or patio. The additional entrance may not be visible from the street. A fire door or exit shall be permitted, provided that the door or exit is equipped with panic type hardware and is maintained in a locked position except in an emergency.



## Alcoholic Beverages

- c. *Golf course clubhouses*, provided that:
    1. The golf course consists of at least nine holes a clubhouse, locker rooms, and attendant golf facilities, and comprises in all at least 35 acres of land.
    2. Failure of such club to maintain the golf course, clubhouse, and golf facilities shall automatically terminate the privilege of the cocktail lounge and sale of beer from the refreshment stands.
  - d. *Membership organizations*, provided that:
    1. such club or organization conforms to all the requirements of F.S. ch. 561 and other applicable state laws, and
    2. there are no signs or other indications visible from the exterior of the clubhouse, building, or structure that alcoholic beverages are served.
- (3) **Parking.** Restaurants providing alcoholic beverages for consumption on the premises must comply with the parking requirements set forth in § 34-2020(d)(2). Any bar or cocktail lounge must provide parking in accordance with § 34-2020(d)(2). All other uses must meet the parking requirements of the principal use.
- (c) **Procedure for approval.**
- (1) **Administrative approval.**
- a. *Application.* An applicant for a consumption on the premises permit shall submit the following information on a form provided by the town:
    1. The name, address, and telephone number of the applicant.
    2. The name, address, and telephone number of the owner of the premises, if not the applicant.
    3. A notarized authorization from the property owner to apply for the permit.
    4. Location by STRAP and street address.
    5. Type of state liquor license being requested.
    6. A site plan, drawn to scale, showing:
      - i. The property in question, including all buildings on the property and adjacent property;
      - ii. Entrances to and exits from the building to be used by the public;
      - iii. A parking plan, including entrances and exits;
      - iv. The floor area of the building and proposed seating capacity. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the lounge shall be shown in addition to the restaurant seating area.
  - 7. A town map marked to indicate all of the property within 500 feet of the building to be used for consumption on the premises.
  - 8. An notarized affidavit executed by the applicant indicating that no place of worship, religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building to be used.
- b. *Findings by director.* Prior to permit approval, the director shall conclude that all applicable standards have been met. In addition, the director shall make the following findings of fact:
1. There will be no apparent deleterious effect upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises.
  2. The premises are suitable in regard to their location, site characteristics, and intended purpose. Lighting must be shuttered and shielded from surrounding properties.
- (2) **Special exception.**
- a. Applications for special exceptions shall be submitted on forms supplied by the town and shall contain the same information as required for administrative approval.
  - b. Advertisements and public hearings shall be conducted in accordance with the requirements set forth in article II of this chapter.
- (d) **Temporary one-day permit.**
- (1) *Intent; applicability.* It is the intent of this subsection to require that nonprofit and for-profit organizations and establishments in the town obtain a one-day temporary alcoholic

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beverage permit for the sale of alcoholic beverages at the specific location where an event is held. This subsection will pertain to but not necessarily be limited to the following uses:

- a. Grand openings or open houses at residential or commercial developments;
  - b. Special outdoor holiday or celebration events at bars and restaurants;
  - c. Weddings and other special occasions at clubhouses;
  - d. Political rallies or events;
  - e. Block parties; and
  - f. Carnivals.
- (2) Only twelve temporary alcoholic beverage permits may be issued per year to a specific location. If more than twelve permits are sought per year for a specific location, then the location must obtain a permanent alcoholic beverage special exception. If the event for which the temporary alcoholic beverage permit is sought continues for longer than one day, the applicant may petition the director for an extended permit. A temporary alcoholic beverage permit may not be issued for more than three days.
- (3) *Procedure for approval.*
- a. Any owner, lessee, or tenant seeking approval for consumption on the premises for a temporary alcoholic beverage permit, must submit a written request to the director. The written request must include:
    1. The name and address of the applicant;
    2. A general description of the exact site where alcoholic beverages are to be sold and consumed;
    3. The type of alcoholic beverages to be sold and consumed; and
    4. A fee in accordance with the adopted fee schedule.
  - b. The director will make a final decision within ten working days. The decision will be in the form of approval, approval with conditions or denial. The director may forward the request to other appropriate agencies for comment.
  - c. The town council will review all requests for temporary alcoholic beverage permits where an event will run longer than three days. Under no circumstances will a

temporary alcoholic beverage permit be issued for more than ten days.

(e) *Expiration of approval.* After the following time periods, the administrative or special exception approval of a location for the sale and consumption of alcoholic beverages on the premises granted in accordance with this section shall expire, and become null and void:

- (1) In the case of an existing structure, the approval shall expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this subsection, the term "operation" shall be defined as the sale of alcoholic beverages in the normal course of business.
- (2) In the case of a new structure, the approval shall expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. The director may grant one extension of up to six months if construction is substantially complete.

(f) *Transfer of permit.* Alcoholic beverage permits, as noted in subsection 34-1264(i), issued by virtue of this section are a privilege running with the land. Sale of the real property shall automatically vest the purchaser with all rights and obligations originally granted to or imposed on the applicant. Such privilege may not be separated from the fee simple interest in the realty.

(g) *Expansion of area designated for permit.* The area designated for an alcoholic beverage permit cannot be expanded without filing a new application for an alcoholic beverage permit in accordance with the requirements contained in this chapter. The new application must cover both the existing designated area as well as the proposed expanded area. All areas approved must be under the same alcoholic beverage permit and subject to uniform rules and regulations.

(h) *Nonconforming establishments.*

- (1) *Expansion.* A legally existing establishment engaged in the sale or service of alcoholic beverages which is made nonconforming by reason of new regulations contained in this chapter shall not be expanded without a

## Alcoholic Beverages

- special exception. The term “expansion,” as used in this subsection, shall include the enlargement of space for such use and uses incidental thereto, the expansion of a beer and wine bar to include intoxicating liquor, as that term is defined by the Florida Statutes, and the expansion of a bar use to a nightclub use. Nothing in this subsection may be construed as an attempt to modify any prohibition or diminish any requirement of the state.
- (2) *Abandonment.* An establishment engaged in the sale or service of alcoholic beverages may thereafter become a nonconforming use due to a change in regulations, as provided in division 3 of article V of this chapter. Nonconforming uses may continue until there is an abandonment of the permitted location for a continuous nine-month period. For purposes of this subsection, the term “abandonment” shall mean failure to use the location for consumption on the premises purposes as authorized by the special exception, administrative approval, or other approval. Once a nonconforming use is abandoned, it cannot be reestablished unless it conforms to the requirements of this chapter and new permits are issued.
- (i) *Revocation of permit or approval.*
- (1) The town council has the authority to revoke an alcoholic beverage special exception, administrative approval, or other approval upon any of the following grounds:
- a. A determination that an application for special exception or administrative approval contains knowingly false or misleading information.
  - b. Violation by the permit holder of any provision of this chapter, or violation of any state statute which results in the revocation of the permit holder’s state alcoholic beverage license by the state alcoholic beverage license board or any successor regulatory authority.
  - c. Repeated violation of any town ordinance at the location within the 12-month period preceding the revocation hearing.
  - d. Failure to renew a state liquor license, or written declaration of abandonment by the tenant and owner of the premises if under lease, or by the owner himself if not under lease.
- e. Abandonment of the premises. An establishment which continually maintains (renews) its state liquor license, even though it has suspended active business with the public, shall not be deemed to have been abandoned for purposes of this subsection.
- f. Violation by the permit holder of any condition imposed upon the issuance of the special exception or administrative approval.
- g. Violation of any of the minimum standards of the special exception.
- (2) Prior to revoking an administrative approval, special exception, or other approval for alcoholic beverages, the town council shall conduct a public hearing at which the permit holder may appear and present evidence and testimony concerning the proposed revocation. At the hearing, the town council may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder shall be notified of the grounds upon which revocation is sought prior to any hearing, and shall be given notice of the time and place of the hearing in the same manner as set forth in article II of this chapter.
- (3) When an alcoholic beverage permit is revoked in accordance with the terms of this subsection, the town may not consider a petition requesting an alcoholic beverage permit on the property for a period of 12 months from the date of final action on the revocation.
- (4) Upon written demand of the town council, any owner or operator of an establishment with a COP license, must make, under oath, a statement itemizing the percentage of gross receipts that are from the sale of alcoholic beverages. Failure to comply with such demand within 60 days of the date of demand shall be grounds for revocation of the special exception, administrative approval, or other approval.

## Alcoholic Beverages

(j) **Appeals.** All appeals of decisions by the director shall be in accordance with procedures set forth in § 34-86 for appeals of administrative decisions.

(k) **Alcoholic beverages in restaurants.** The sale of alcoholic beverages for on-premises consumption in restaurants (see § 34-1264(b)(2)) must conform to the following regulations:

- (1) The sale of alcoholic beverages must be incidental to the sale of food, and restaurants permitted to serve alcohol shall provide that food service facilities will remain open serving appropriate food items on the menu at all times coincident with the sale of alcoholic beverages.
- (2) The sale of alcoholic beverages shall be permitted only when it accounts for no more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period.
- (3) Restaurants selling alcoholic beverages shall keep separate books and records reflecting the gross sales of food and nonalcoholic beverages and the gross sales of alcoholic beverages for each month. The failure to keep the books and records required herein shall be a violation of this code.
- (4) The town manager or designee may, during normal working hours, request to inspect and audit the books and records of the business from which alcoholic beverages sales are made wholly for the purpose of verifying that the gross sales of alcoholic beverages are no more than 49% of the gross sales of food and all beverages during any continuous twelve-month period. Refusal of an owner or operator of such business to allow said inspection shall be a violation of this code. Should the audit reveal that this requirement is not being met, the town manager shall initiate enforcement proceedings for a violation of this code.
- (5) For any restaurant which has been selling alcoholic beverages for less than twelve months, the provisions of this section shall be interpreted and applied with respect to said lesser period of time.
- (6) These regulations may be enforced through the normal code enforcement procedures of

this code (for example, § 1-5, or article V of ch.2). In addition to these procedures, violations of these regulations may be restricted by injunction initiated by the Town of Fort Myers Beach, by any citizen thereof, or by any person affected by the violation of such regulations.

**Secs. 34-1265--34-1290. Reserved.**

## DIVISION 6. ANIMALS

### Sec. 34-1291. Keeping of animals.

The keeping, raising, or breeding of any livestock, including poultry, usually and customarily considered as farm animals, and the keeping, raising, or breeding of reptiles, marine life, or animals not indigenous to the state, shall not be permitted. This shall not be interpreted as applying to pet stores or hobbyists keeping aquariums or domestic tropical birds in their own homes.

### Secs. 34-1292--34-1320. Reserved.

## DIVISION 7. ANIMAL CLINICS AND KENNELS

### Sec. 34-1321. Permitted activities.

(a) Kennels, animal clinics, and boarding facilities are limited to the raising, breeding, treating, boarding, training, grooming, and sale of domestic animals.

(b) Kennels, animal clinics, and boarding facilities are permitted in any zoning district where *Offices, general or medical* are a permitted use.

### Sec. 34-1322. Enclosure of facilities.

All animal clinics, animal kennels, and boarding facilities shall be completely enclosed within an air conditioned, soundproof building and shall have no outdoor cages, pens, runs, or exercise facilities.

### Secs. 34-1323--34-1350. Reserved.

## DIVISION 8. AUTOMOTIVE BUSINESSES

### Sec. 34-1351. Automobile repair

(a) All services performed by an automobile repair establishment, including repair, painting, and body work activities, shall be performed within a completely enclosed building.

(b) Whenever an automotive repair establishment is within 75 feet of a residential use, all refuse and vehicle parts shall be stored within a completely enclosed area.

(c) New or expanded automobile repair establishments can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)) or as a special exception where allowed by Tables 34-1 and 34-2 in § 34-622.

### Sec. 34-1352. Display, sale, or storage facilities for vehicles.

(a) *Applicability.* This section applies to all establishments engaged in the outdoor display, sale, or storage of motor vehicles, recreational vehicles, trailers, construction equipment, and similar vehicles and equipment.

(b) *New or expanded uses.* New or expanded establishments can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)).

#### (c) *Setbacks.*

- (1) All buildings and structures shall comply with the setback requirements for the zoning district in which the use is located.
- (2) All items covered by this section which are displayed or offered for sale shall be set back a minimum of ten feet from any property line, unless ch. 10 sets forth a different setback, in which case the greater setback will apply.

#### (d) *Display and parking areas.*

- (1) No parking space or loading zone required by the parking regulations set forth in this chapter shall be used for the display of merchandise.
- (2) Areas used for display may be grass or other surface, provided it is maintained in a slightly, dustfree manner.

(e) *Storage areas.* Areas used for the commercial storage of motor vehicles, trailers, recreational vehicles, and construction equipment which is not being displayed for sale or rent shall be enclosed (see division 36 of this article), unless *Storage, open* is permitted through approval of a suitable planned development zoning district (see § 34-620(d)).

(f) *Lighting*. Artificial lighting used to illuminate the premises shall be directed away from adjacent properties and streets, shining only on the subject site.

#### **Sec. 34-1353 Automobile rental.**

New or expanded establishments renting automobiles or trucks must obtain a special exception for *Automobile rental* in accordance with division 2 of article III of this chapter.

#### **Secs. 34-1354--34-1380. Reserved.**

### **DIVISION 9. BUS STATIONS AND TRANSIT TERMINALS**

#### **Sec. 34-1381. Purpose of division.**

The purpose of this division is to set forth standards and criteria for the safe and efficient development of transit terminals whereby they may be permitted by special exception in accordance with Tables 34-1 and 34-2. A central transit terminal is encouraged by Policy 7-D-1 of the Fort Myers Beach Comprehensive Plan to connect local trolleys and taxis with an airport shuttle service.

#### **Sec. 34-1382. Site plan.**

All applications for a transit terminal shall include a site plan, drawn to scale, indicating but not limited to following:

- (1) The location of the bus stalls.
- (2) Commuter parking, if provided.
- (3) Taxi waiting stalls.
- (4) Circulation pattern of the buses including ingress and egress points.
- (5) The location of any building housing the transit terminal and the area designated for a waiting area, to include the storage and handling of luggage and parcels.

#### **Sec. 34-1383. Access.**

The site plan shall be designed so that the location of ingress and egress points and turning radii are adequate for the anticipated vehicles.

#### **Sec. 34-1384. Parking**

(a) *Parking*. The parking for a transit terminal where the loading and unloading of passengers, luggage, or parcels may occur shall meet the following minimum requirements:

- (1) Parking spaces shall be required for all buses using the site. A minimum of one bus parking space shall be required for each bus carrier using the facility. If arrival and departure times run concurrently, then additional parking must be provided to ensure that each bus has a separate parking space.
- (2) The parking spaces for each bus stall shall be designated by signage and pavement markings and
- (3) For every 12 daily scheduled bus arrivals and departures, or a portion thereof, at locations where passengers may disembark, one parking space for taxicabs and one parking space for commuters shall be required.

(b) *On-street parking*. In some instances, it may be appropriate for a transit terminal to have the buses parked within an adjacent road right-of-way. In all such instances, the location of the bus turnout, proximity to the transit terminal, and how the bus will enter and exit the turnout must be shown on the site plan.

#### **Secs. 34-1385--34-1410. Reserved.**

### **DIVISION 10. CARE AND ASSISTED LIVING FACILITIES**

#### **Sec. 34-1411. Assisted living facilities.**

(a) *Location*. Assisted living facilities (ALF's) may be located in zoning districts as specified in Tables 34-1 and 34-2 in § 34-622, but they are subject to the maximum density for the land use category applicable to the subject property, with density calculated in accordance with §§ 34-1415.

(b) *Design*. An assisted living facility must be designed so as to appear as, and be compatible with, adjacent residential buildings.

(c) *Parking*. For parking requirements, see § 34-2020(d)(1).

**Secs. 34-1412–34-1413. Reserved.**

**Sec. 34-1414. Continuing care facilities.**

(a) **Generally.** Continuing care facilities (CCF's) may only be located in a CPD or RPD district, if enumerated on the master concept plan.

Continuing care facilities shall be subject to the maximum density for the land use category applicable to the subject property, with density calculated in accordance with § 34-1415.

(b) **Design; required facilities.**

- (1) A continuing care facility shall provide housing for older persons pursuant to title VII USC.
- (2) A continuing care facility must provide full common dining facilities on the site. Individual units may be equipped with kitchens, but an average of at least one meal a day must be provided by the continuing care facility for all residents.
- (3) A continuing care facility must incorporate one or more resident services on the site, such as banking facilities, barbershops, or beauty shops, pharmacies, and laundry or dry cleaning.
- (4) A continuing care facility must provide a shuttle bus service or similar transportation service for residents.

(c) **Parking.** For parking requirements, see § 34-2020(d)(1) et seq.

**Sec. 34-1415. Density equivalents.**

(a) Where assisted living facilities (ALF), continuing care facilities (CCF), or other “group quarters” are provided in living units, each of which has its own cooking facilities, density equivalents will be calculated on a 1:1 ratio.

(b) Except as may be specifically set forth elsewhere in this chapter, where assisted living facilities, continuing care facilities, or other “group quarters” are provided in living units or other facilities wherein each unit does not have individual cooking facilities and where meals are served at a central dining facility or are brought to the occupants from a central kitchen, density equivalents will be calculated at the ratio of four people being equivalent to one dwelling unit.

(c) Independent living units within a licensed continuing care facility will be calculated on the basis of two independent living units being equivalent to one residential dwelling unit.

**Secs. 34-1416--34-1440. Reserved.**

**DIVISION 11. COMMERCIAL ANTENNAS AND COMMUNICATION TOWERS**

**Sec. 34-1441. Purpose and intent.**

(a) The purpose of this division is to regulate commercial antennas, the structures on which they are located, and communication towers. Wireless telephone service providers are also affected by F.S. 365.172.

(b) Cellular telephones and other personal communications services rely on a network of antennas. Due to its location, Fort Myers Beach can be served partially by nearby antennas on the mainland and partially by antennas placed on tall buildings within the town. Only rarely, if ever, will a free-standing communications tower be needed to support any type of commercial antenna. These regulations are designed to facilitate the location of commercial antennas on tall buildings and also to provide a procedure for approving a new communication tower where it can be demonstrated conclusively that one is required.

(c) Amateur radio antenna/towers and satellite dishes are not regulated by this division; see § 34-1175.

**Sec. 34-1442. Definitions**

For purposes of this division, certain terms are defined as follows:

*Alternative support structure* means any man-made structure, except communication towers, including, but not limited to, buildings, power poles, light poles, clock towers, bell towers, steeples, water towers, and other similar structures suitable for the attachment of commercial antennas.

*Commercial antenna* means an exterior apparatus used for transmitting and/or receiving radio-frequency signals for the convenience of users not employed or residing on the premises.

*Communication tower* means a tower structure that is designed and constructed primarily to elevate one or more commercial antennas for communications purposes, whether such tower is mounted on the ground or on another structure.

*Old tower* means a communication tower that existed or was granted a special exception prior to March 3, 2003.

*New tower* means a communication tower that requires approval under this section.

**Sec. 34-1443. Commercial antennas mounted on alternative support structures.**

(a) **Zoning districts.** Commercial antennas on alternative support structures may be approved in all zoning districts, except that no commercial antenna may be permitted on a single family or two-family home or its accessory building or structure.

(b) **Administrative approval required.** The town manager may issue administrative approval for commercial antennas to be mounted on alternative support structures when they comply with the standards in subsection (c) and the remainder of this code. The town manager's decision may be appealed in accordance with § 34-86.

(c) **Standards.** Commercial antennas mounted on alternative support structures must meet the following standards:

- (1) Neither the antenna, its supporting structure, or any ancillary structure may extend more than 10 feet above the highest existing point of the roof; and
- (2) The antenna and related structures including equipment rooms shall be concealed from view or designed and maintained to blend into the surrounding environment.
  - a. Concealment may be accomplished using parapet walls or existing mechanical facilities, or through the use of screening devices such as lattice enclosures.
  - b. Blending may be accomplished through the physical arrangement of antenna elements and through painting or coating of surfaces to match the primary structure in a way that makes them visually unobtrusive.

- (3) The antenna and related structures must be insured against damage to persons and property. A certificate of insurance must be provided to the town manager annually.

(d) **Nonconformities.** The installation of a commercial antenna on a nonconforming building or a building containing a nonconforming use will not be deemed to constitute the expansion of the nonconformity.

**Sec. 34-1444. Commercial antennas mounted on communication towers.**

(a) **Required zoning approvals.** New communication towers suitable for commercial antennas may be approved by special exception, as provided in division 2 of article III of this chapter, subject to the additional requirements of this division. Special exception applications for communication towers must also include the same documentation for antenna-supporting structures required by Lee County through its land development code.

(b) **Required sharing of communication towers.** The owner/operator of any proposed new communication tower must enter into an agreement (shared-use plan agreement) with the town or county requiring the owner/operator of the proposed tower to honor all reasonably and technically feasible requests for shared use of the tower for additional commercial antennas.

- (1) New towers must be designed to withstand a wind load of at least 120 mph (TIA/EIA Standard 222-F) and must accommodate three additional carriers with a minimum wind loading of 160 sq. ft. factored area including the mounting bracket.
- (2) Once a shared-use plan for a tower is approved, additional antennas may be added to that tower in accordance with the approved shared-use plan without additional special exception approval.

(c) **Development standards for communication towers.** The owner/operator of any new communication tower must also obtain a development order and comply with the specific application requirements and development standards for antenna-supporting structures required by Lee County through its land development code.  
**Secs. 34-1445--34-1550. Reserved.**



## DIVISION 12. DRUG PARAPHERNALIA

### Sec. 34-1551. Drug paraphernalia defined.

The term “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of state law. Drug paraphernalia includes, but is not limited to:

- (1) Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.
- (8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.
- (9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
- (10) Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.
- (11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
- (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:
  - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.
  - b. Water pipes.
  - c. Carburetion tubes and devices.
  - d. Smoking and carburetion masks.
  - e. Roach clips, meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.
  - f. Miniature cocaine spoons and cocaine vials.
  - g. Chamber pipes.
  - h. Carburetor pipes.
  - i. Electric pipes.
  - j. Air-driven pipes.
  - k. Chillums.
  - l. Bongs.
  - m. Ice pipes or chillers.
  - n. A cartridge or canister, which means a small metal device used to contain nitrous oxide.
  - o. A charger, sometimes referred to as a “cracker,” which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.
  - p. A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.
  - q. A whip-it, which means a device that may be used to expel nitrous oxide.

**Sec. 34-1552. Determination of paraphernalia.**

In determining whether an object is drug paraphernalia, the special magistrate, court, jury, or other enforcing authority shall consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use.
- (2) The proximity of the object, in time and space, to a direct violation of state law.
- (3) The proximity of the object to controlled substances.
- (4) The existence of any residue of controlled substances on the object.
- (5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of state law. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this code or state law shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
- (6) Instructions, oral or written, provided with the object concerning its use.
- (7) Descriptive materials accompanying the object which explain or depict its use.
- (8) Any advertising concerning its use.
- (9) The manner in which the object is displayed for sale.
- (10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.
- (11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- (12) The existence and scope of legitimate uses for the object in the community.
- (13) Expert testimony concerning its use.

**Sec. 34-1553. Manufacture and delivery of drug paraphernalia.**

No land or structure shall be used or permitted to be used, and no structure shall hereafter be erected, constructed, moved, altered, or maintained in any zoning district, for the purpose of delivering, possessing with intent to deliver, or manufacturing with intent to deliver drug paraphernalia, knowing,

or under circumstances where one reasonably should know, that it will be used:

- (1) To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of state law; or
- (2) To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of state law.

**Secs. 34-1554--34-1570. Reserved.**
**DIVISION 13.  
ENVIRONMENTALLY SENSITIVE AREAS**
**Sec. 34-1571. Purpose of division; areas of concern.**

Several of the goals, objectives, and policies set forth in the Fort Myers Beach Comprehensive Plan address development as it relates to the preservation, protection, enhancement, and restoration of the natural resources of the town.

- (1) Coastal resources including:
  - a. Marine: Gulf of Mexico.
  - b. Estuarine: Coastal bays, coastal lagoons, coastal tributaries, forested saltwater wetlands, nonforested saltwater wetlands and sea grass beds.
  - c. Terrestrial: Beaches, dunes, coastal ridge, overwash plain, and zones of archaeological sensitivity (see ch. 22).
- (2) Other natural resources including:
  - a. Wetlands as defined in this code.
  - b. Areas which provide critical habitat of rare and endangered plant and animal species listed in the publication Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida, as periodically updated.
  - c. Areas of rare and unique upland habitats as indicated in Lee County's 1988 coastal study, including but not limited to the following:
    1. Sand scrub (320).
    2. Coastal scrub (322).
    3. Those pine flatwoods (411) which can be categorized as mature due to the absence of severe impacts caused by

logging, drainage, and exotic infestation.

4. Slash pine/midstory oak (412).
5. Tropical hardwood (426).
6. Live oak hammock (427).
7. Cabbage palm hammock (428).

The numbered references are to the Florida Land Use Cover and Forms Classification System (FLUCFCS), level III (FDOT, 1985).

**Sec. 34-1572. Applicability of division.**

All areas proposed for development or rezoning which are designated as Wetlands on the future land use map, or which come under the criteria set forth in § 34-1571, shall be subject to the general as well as the specific regulations set forth in this division.

**Sec. 34-1573. Environmental assessment report.**

When environmentally sensitive ecosystems occur, as identified by the town, county, the U.S. Army Corps of Engineers, the state department of environmental protection, the South Florida Water Management District or other applicable regulatory agency, the developer or applicant shall prepare an environmental assessment that examines the existing conditions, addresses the environmental impacts, and proposes means and mechanisms to protect, conserve, or preserve the environmental and natural resources of these ecosystems.

**Sec. 34-1574. Compliance with applicable regulations; new roads, development, or expansion of existing facilities.**

(a) Any use permitted or permissible in environmentally sensitive areas shall be subject to all applicable state and federal regulations as well as applicable town regulations.

(b) Except in instances of overriding public interest, new roads, private land development, or the expansion of existing facilities within Wetlands or on the sandy beaches that are designated in the Recreation category in the Fort Myers Beach Comprehensive Plan shall be prohibited.

**Sec. 34-1575. Coastal zones.**

(a) Development, other than minor structures as defined in § 6-333, is prohibited seaward of the 1978 coastal construction control line. This line has been incorporated into the future land use map of the Fort Myers Beach Comprehensive Plan as the landward boundary of the beachfront Recreation category (see also Policy 5-D-1.v), and as the landward boundary of the EC zoning district (see § 34-652). Regulations for minor structures in the EC zoning district (seaward of the 1978 coastal construction control line) are found in § 6-366.

(b) Minor structures do not include structures supported by or extensions of the principal structure. The minor structures identified as acceptable in this section are considered expendable under design wind, wave, and storm forces.

(c) No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers (see §§ 6-366 and 10-415(b)).

(d) No development will be permitted which alters the dune system, except for excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection.

**Sec. 34-1576. Reserved.**

**Sec. 34-1577. Wetlands.**

(a) Any development in or around wetlands shall be designed to protect the values and functions of the wetlands as set forth in ch. 14, article IV.

(b) No wetland shall be drained, filled, or excavated unless and except as part of an approved restoration or mitigation program.

**Secs. 34-1578--34-1610. Reserved.**

## **DIVISION 14. ESSENTIAL SERVICES, ESSENTIAL SERVICE EQUIPMENT, AND ESSENTIAL SERVICE BUILDINGS**

### **Sec. 34-1611. Purpose of division.**

The purpose of this division is to set forth the development regulations for uses defined in § 34-2 as essential services, essential service equipment, and essential service buildings.

### **Sec. 34-1612. Where permitted**

(a) All essential services, as defined in § 34-2, are permitted by right as shown in Table 34-1 when necessary for the day-to-day operation of the service, subject to the requirements set forth in this division.

(b) New or expanded essential service equipment, as defined in § 34-2, is permitted by right as shown in Table 34-1 when necessary for the day-to-day operation of the service, subject to the requirements set forth in this division.

(c) New or expanded essential service buildings, as defined in § 34-2, are permitted by special exception as shown in Table 34-1 if the building(s) are sited, constructed, and maintained to appear as a conventional building that would be permitted in the site's zoning district. All other new or expanded essential service buildings can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)).

### **Sec. 34-1613. Reserved.**

### **Sec. 34-1614. Height of structures in visibility triangle.**

No portion of any building or structure regulated by this division which exceeds two feet in height shall be permitted within the visibility triangle set forth in § 34-3131, pertaining to vehicle visibility.

### **Sec. 34-1615. Maximum number of structures per residential block.**

Not more than one structure or group of structures which collectively exceed 150 cubic feet in volume shall be permitted on the same side of a street within any residential block, unless a

minimum separation of four lot widths is observed between the structures.

### **Sec. 34-1616. Screening and buffering.**

(a) Structures or equipment (excluding transmission poles) exceeding 3 feet in height, or which individually or collectively on the same parcel exceed 27 cubic feet in volume, must be of neutral, non-glare color or finish so as to make them as visually unobtrusive as possible.

(b) Structures or equipment (excluding transmission poles) exceeding 3 feet in height, or which individually or collectively on the same parcel exceed 80 cubic feet in volume, must be of neutral, non-glare color or finish and be shielded on all sides by shrubs at least 3 feet high at time of planting consistent with the requirements of § 10-420.

### **Sec. 34-1617. Exemptions from property development regulations.**

Essential services or essential service equipment shall be exempt from the property development regulations which set forth minimum lot size, area, dimensions, and setbacks, except that above-ground essential services or essential service equipment may not be placed closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard.

### **Secs. 34-1618--34-1650. Reserved.**

## **DIVISION 15. EXCAVATIONS**

### **Sec. 34-1651. Required approvals.**

No manmade water detention or retention bodies shall be commenced prior to receiving approval in accordance with the provisions of ch. 10. A certificate to dig shall be obtained prior to receiving approval to excavate properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to ch. 22.

### **Secs. 34-1652--34-1740. Reserved.**

## **DIVISION 16. RESERVED**

## Fences and Walls

### DIVISION 17. FENCES, WALLS, AND ENTRANCE GATES

#### Sec. 34-1741. Applicability of division.

This division shall apply to all fences, walls, and entrance gates which are not specifically exempted in this division. This division shall not apply to seawalls (see ch. 26 for regulations on seawalls).

#### Sec. 34-1742. Design and construction of fences and walls.

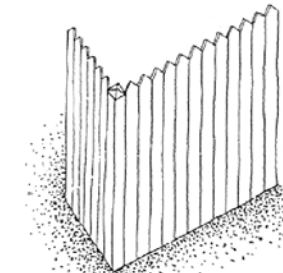
(a) **Building permits required.** All fences and walls that are over 25 inches in height shall comply with established building permit procedures.

(b) **Design.** All fences and walls on each property must have reasonably uniform or complementary materials and design. Figure 34-28 shows several recommended designs for fences and walls.

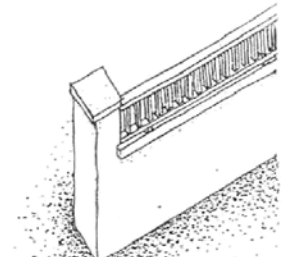
(c) **Materials.** Fences and walls must be constructed of traditional building materials including brick, stone, stucco over concrete block, finished concrete, metal, vinyl, wood (natural, stained, or painted), and composite products manufactured specifically for fences and walls. Non-traditional fence materials such as tires, mufflers, hubcaps are prohibited. Chain link and other wire fences are not permitted in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

(d) **Finished sides.** Fences and walls must be constructed to present a finished side to adjoining lots and any abutting rights-of-way. Where there is an existing fence, wall, or continuous landscape hedge on the adjoining parcel, the director may waive this provision administratively.

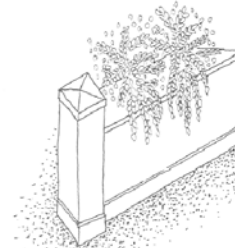
(e) **Maintenance.** After construction, fences and walls must be maintained with all original components and they must remain substantially vertical to serve their functions and aesthetic purposes. Structural integrity must not be compromised to the point that the fence would present a danger of flight or destruction during high winds.



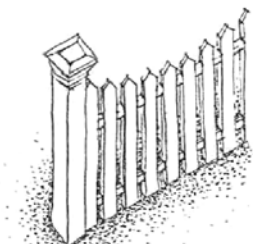
Wood privacy fence  
(side or rear yard only)



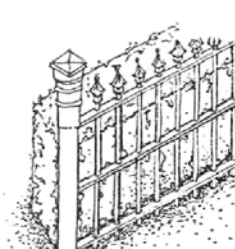
Concrete, stucco, and wood



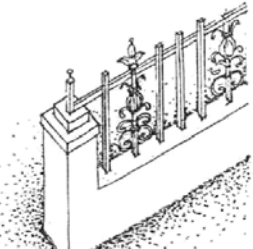
Concrete, stucco, and planter



Wood picket fence



Wrought/cast iron and hedge



Concrete, stucco, and cast iron

Figure 34-29

(f) **Dangerous fences.** No barbed wire, spire tips, sharp objects, or electrically charged fences shall be erected except that a fence 72 inches high with three strands of barbed wire on top of the fence with six-inch spacing between the strands of barbed wire may be required or approved by the director around structures or equipment of potential hazard to residents or passersby not otherwise protected. However, chain link and other non-decorative wire fences may not be used in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

#### Sec. 34-1743. Reserved.

## Fences and Walls

### Sec. 34-1744. Location and height of fences and walls.

(a) **Setbacks.** Except as may be specifically permitted or required by other sections of this chapter or chapter 10, no fence or wall, excluding seawalls, shall be erected, placed, or maintained:

- (1) Within any street right-of-way or street easement, or closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard.
- (2) Closer to the Gulf of Mexico than permitted by ch. 6, article III.
- (3) Closer than five feet to the mean high-water line along natural water bodies, including canals created from sovereign lands, except that, where the canal is seawalled, the fence may be built immediately landward or on top of the seawall.

(b) **Height.** The maximum height for fences and walls, measured from the existing elevation of the abutting property, is illustrated in Figure 34-29 and described as follows:

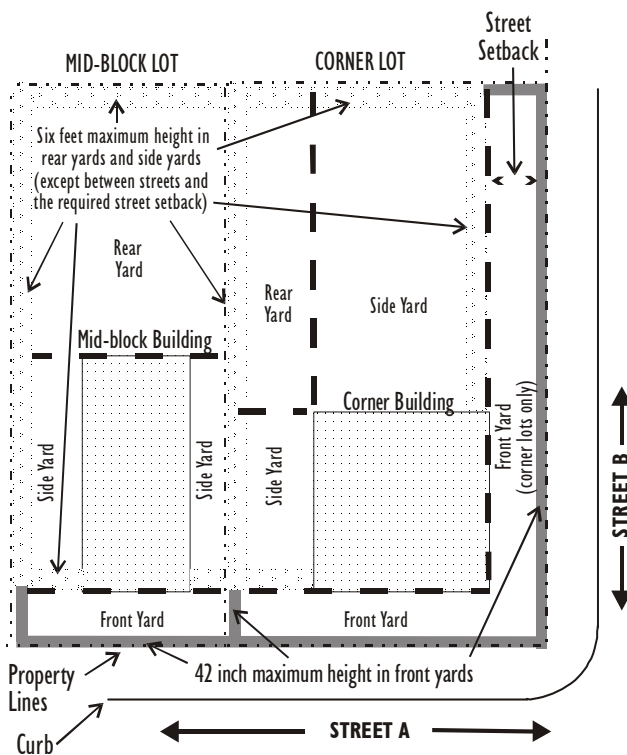


Figure 34-30

- (1) **Front yards.** Any fence or wall located in a front yard (between a street right-of-way or easement and the minimum required street setback or build-to line) shall not exceed 42 inches in height, except where a lesser height is required to meet vehicle visibility requirements (see § 34-3131) at traffic access points.
- (2) **Side and rear yards.** Any fence or wall located in a side or rear yard shall not exceed six feet in height.
  - a. For purposes of this requirement, the side yard does not include any portion of the lot between a street and the minimum required street setback or build-to line.
  - b. Where a side or rear yard slopes downward from the street, a fence may be up to seven feet above the elevation of the abutting property to avoid unnecessary variations in the height of a fence.
- (3) **Near water bodies.** Within 25 feet of a body of water, those portions of a fence that exceed 42 inches in height cannot be more than 25% opaque (as viewed from perpendicular to the fence).
- (4) **Exceptions:**
  - a. **Architectural features.** Fences and walls may include occasional architectural features such as columns, posts, gates, and arbors at a height not exceeding 84 inches. All such features must be visually compatible with the fence or wall design.
  - b. **Administrative setback variances.** Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.
  - c. **Enclosure of high-voltage transformers.** See § 34-1748.

### Sec. 34-1745. Buffer for commercial uses.

Some land uses are required to provide perimeter buffers in accordance with §§ 34-3005 or 10-416. Where buffers are required by other provisions of this code, this division will not be interpreted to restrict the height, location, or other features of required buffers.

### Sec. 34-1746. Reserved.

## Fences and Walls

### **Sec. 34-1747. Construction in easements.**

Nothing in this division shall be construed so as to permit the construction or placing of any construction within a public or private easement which prohibits such construction or placement.

- (2) If an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate.

### **Sec. 34-1748. Enclosure of high-voltage transformers and other utility equipment.**

All substation high-voltage transformers and any other utility structures or equipment of potential hazard to residents or passersby not otherwise protected shall be completely enclosed by a fence not less than eight feet in height. On top of the fence shall be three strands of barbed wire with a six-inch spacing in between each strand. However, chain link and other non-decorative wire fences may not be used in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

### **Secs. 34-1750--34-1770. Reserved.**

### **Sec. 34-1749. Entrance gates.**

(a) Entrance gates are not permitted on public or private streets. Decorative entrance features that do not restrict access may be placed along public or private streets provided permission is granted by the town and others entity with authority over the right-of-way or easement.

(b) Entrance gates may be placed on private property that is not subject to any access easements in order to control access to a private parking lot or to a parking lot that lawfully rents parking spaces to the general public. Adequate stacking space must be provided in front of the gate to avoid interference with traffic flow on adjoining streets.

(c) Access for emergency vehicles must be provided to any existing entrance gates on private streets.

- (1) Any security gate or similar device that is not manned 24 hours per day must be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles.

## DIVISION 18. HOME OCCUPATIONS; LIVE/WORK AND WORK/LIVE DWELLINGS

### **Sec. 34-1771. Intent of division.**

It is the intent of this division to allow the operation of:

- (a) *Home occupations*, by right, in all districts permitting dwelling units, but to regulate them so that the average neighbor, under normal circumstances, will not be disturbed or inconvenienced by them; and
- (2) *Live/work and work/live dwelling units*, by right or by special exception as specified in Tables 34-1 and 34-2 in § 34-622, but to regulate them so that their mixed-use character is compatible with their neighborhood and is maintained over time.

### **Sec. 34-1772. Home occupations.**

(a) Any use of a residence for a home occupation as defined by this chapter shall be clearly incidental and subordinate to its use for residential purposes by its occupants and thus is considered to be a residential accessory use and is permitted in accordance with the regulations in this section in all zoning districts except EC.

(b) Such use shall be conducted entirely within the dwelling unit or customary accessory building.

(c) No employees or contractors other than members of the household residing in the dwelling shall be permitted to work at the residence, but may be employed to work elsewhere provided that the employees do not regularly come to the residence for equipment, vehicles, or supplies. Under special conditions, such as a handicapped person or retiree needing clerical assistance, the director may grant administrative approval to allow one employee who is not a resident of the home to work at the residence.

(d) There shall be no exterior indication that the dwelling is being used for any purpose other than a residence, except that one nonilluminated nameplate, not exceeding one square foot (144 square inches) in area, may be attached to the building on or next to the entrance.

(e) No commodities, stores, or display of products on the premises shall be visible from the

street or surrounding residential area, and no outdoor display or storage of materials, goods, supplies, or equipment used in the home occupation shall be permitted on the premises. Vehicles and trailers for use by the business may not be parked or stored on the premises unless completely enclosed within a building.

(f) No equipment shall be used which creates noise, vibration, glare, fumes, or odors outside the dwelling unit that are objectionable to the normal senses.

(g) A home occupation shall not generate greater volumes of traffic than would otherwise be expected by normal residential uses, and a home occupation shall not attract more than an average of ten total visits per week from customers, clients, and suppliers.

### **Sec. 34-1773. Live/work dwelling units.**

(a) A live/work dwelling unit is defined by this chapter as a single dwelling unit in a detached building, or in a multifamily or mixed-use building, that also accommodates limited commercial uses within the dwelling unit.

(b) The predominate use of a live/work unit is residential, and commercial activity is a secondary use. The quiet enjoyment expectations of residential neighbors takes precedence over the work needs of a live/work unit.

(c) Commercial uses in live/work units must be conducted entirely within the unit or customary residential accessory building.

(d) Up to two employees or contractors other than members of the immediate family residing in the dwelling may work in a live/work unit.

(e) Ground signs and pole signs are not permitted. Signage for live/work units is limited to up to four square feet of nonilluminated nameplates or blade signs that are attached to the building on or next to the entrance.

(f) No commodities, stores, or display of products on the premises shall be visible from the street or surrounding residential area, and no outdoor display or storage of materials, goods, supplies, or



equipment used in the live/work unit shall be permitted on the premises.

(g) Required parking spaces shall be in accordance with the residential parking standards in § 34-2020, plus 1 space per employee.

(h) No equipment shall be used which creates noise, vibration, glare, fumes, or odors outside the dwelling unit that are objectionable to the normal senses.

(i) Commercial uses in live/work units are limited to *Office, general or medical* as defined by this chapter (see § 34-2). However, due to the residential nature of live/work units, visits from customers, clients, and suppliers shall average no more than a total of thirty visits per week.

**Sec. 34-1774. Work/live dwelling units.**

(a) A work/live dwelling unit is defined by this chapter as a single dwelling unit in a detached building, or in a multifamily, mixed-use, or commercial building, where the predominate use of the unit is commercial.

(b) Because the predominate use of a work/live unit is commercial, customary commercial impacts may take precedence over the quiet enjoyment expectations of residential neighbors.

(c) Commercial uses in work/live units must be conducted entirely within the unit or customary accessory building.

(d) Signs shall be in accordance with the standards for business signs in ch. 30.

(e) Required parking spaces shall be in accordance with the commercial parking standards in § 34-2020, plus 2 spaces for the dwelling unit.

(f) Commercial uses in work/live units are limited to *Office, general or medical; Personal services; Restaurant; and Retail store, small*, as defined by this chapter (see § 34-2).

**Secs. 34-1775--34-1800. Reserved.**

## Hotels and Motels

### DIVISION 19. HOTELS, MOTELS, AND BED-AND-BREAKFAST INNS

#### Sec. 34-1801. Definitions and general requirements.

(a) The following definitions from § 34-2 are repeated here for convenience:

- (1) ***Bed-and-breakfast inn*** means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings.
- (2) ***Guest unit*** means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with partial or full kitchens.
- (3) ***Hotel/motel*** means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer.
- (4) ***Lock-off accommodations*** means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry or share a common foyer with separate lockable interior doors, or may share a lockable door or doors separating the two units.

(b) Hotels/motels and bed-and-breakfast inns must:

- (1) Be licensed as transient public lodging establishments with the Florida department of business and professional regulation; and
- (2) Pay the levied tourist development tax promulgated by the county and the state sales tax; and

- (3) Provide and staff a front desk during regular business hours to arrange for the rental of guest units; and
- (4) Guest units may not be occupied by the same guest for more than 60 days in any year. "Guest" includes the guest's children and parents. "Year" means the period beginning October 1 and ending September 30 of each successive year.

Hotels/motels and bed-and-breakfast inns which do not meet these requirements will be subject to enforcement action (see § 34-266). Proposed developments that will not meet these requirements will not be approved as hotels/motels or bed-and-breakfast inns; if approved instead as multiple-family buildings, they will be subject to the density limitations and property development regulations for multiple-family buildings.

(c) Guest units in new hotels/motels and bed-and-breakfast inns may be sold as timeshare units or as hotel condominiums provided that they meet all requirements of this code for hotels/motels or bed-and-breakfast inns.

(d) Guest units in existing hotels/motels and bed-and-breakfast inns that are being parcelized to timeshare units or hotel condominiums do not need to comply with the special parcelization requirements of § 34-636.

#### Sec. 34-1802. Size of guest units.

(a) ***Method of measurement.*** For purposes of this division, the size of a guest unit is the actual square footage within each guest unit including balconies and private patios, but not including common facilities such as corridors, stairways, shared bathrooms, or other common spaces including utility areas or parking spaces.

(b) ***Hotels/motels.*** Individual guest units in a hotel/motel must be at least 180 square feet in size, except as provided in § 34-1803(b)(2).

(c) ***Bed-and-breakfast inns.*** Individual guest units in a bed-and-breakfast inn must be at least 120 square feet in size.

## Hotels and Motels

### Sec. 34-1803. Allowable intensity.

(a) **Hotels/motels.** When a hotel/motel is permitted on a property, guest units can be substituted for the dwelling units that would be allowed on that property (see § 34-632 regarding density). The maximum number of guest units can be computed by multiplying the maximum number of dwelling units by the appropriate equivalency factors:

- (1) The following table indicates the equivalency factors that apply to properties in various land-use categories in the Fort Myers Beach Comprehensive Plan:

Comprehensive Plan land-use category:	Equivalency factors for guest units of various sizes <sup>1</sup> (in square feet):		
	< 450	450 to 750	750 to 1,000
Mixed Residential	2.0	1.5	1.0
Boulevard	2.5	2.0	1.5
Pedestrian Comm. <sup>2</sup>	3.0	2.5	2.0
(all others)	0.0	0.0	0.0

<sup>1</sup> see § 34-1802  
<sup>2</sup> see also § 34-1803(b)

- (2) Guests units exceeding these equivalency factors or exceeding 1,000 square feet each may be allowed under exceptional circumstances as described in the Comprehensive Plan if approved as a deviation through a planned development rezoning. Before approving such a deviation, the town council must find that:
- All other aspects of the development (height, traffic, intensity of use, etc.) are compatible with the surrounding area;
  - The proposal clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan; and
  - In no case can equivalency factor increases exceed the maximum intensities allowed by the Fort Myers Beach Comprehensive Plan.
- (3) Where lock-off accommodations are provided, each keyed room will be counted as a separate guest unit.

(b) **Hotels on Old San Carlos Boulevard.** The 1999 Old San Carlos Boulevard – Crescent Street Master Plan encourages mixed-use buildings with second and third floors over shops on Old San Carlos Boulevard. To help implement this plan, an alternate method is provided by Comprehensive Plan Policy 4-C-6 for computing maximum hotel intensities for properties between Fifth to First Streets that lie within 200 feet east and west of the centerline of Old San Carlos Boulevard. In this situation and location only:

- Guest units may be substituted for otherwise allowable office space without using the equivalency factors in § 34-1803(a), provided that all other requirements of this code are met including minimum parking requirements and maximum floor-area-ratios.
- These guest units must contain at least 250 square feet each.
- The standard height limit at this location is three stories. Under no circumstances may a deviation be granted that would allow these guest units in any building taller than four stories. (The ground level is counted as the first story.)

(c) **Bed-and-breakfast inns.** The intensity of bed-and-breakfast inns shall be calculated in the same manner as for hotel/motels, except that inns with three or fewer guest rooms per building are exempt from the requirement to use equivalency factors to measure their intensity.

### Sec. 34-1804. Parking.

(a) **Hotels/motels.** The minimum requirement for off-street parking is 1.2 parking spaces for guest units up to 450 square feet and 1.5 spaces for each larger guest unit. Ancillary uses located in separate buildings and available to nonguests must provide parking spaces in accordance with the requirements of division 26 of this article.

(b) **Bed-and-breakfast inns.** The minimum requirement for off-street parking is 1 parking space for each guest room plus 1 space for the owners' quarters.

## Hotels and Motels

### **Sec. 34-1805. Additional regulations for bed-and-breakfast inns.**

(a) Whenever guests are present, the owner or operator must live on the premises or on abutting property, or if the inn is in a cluster of separate buildings the owner or operator must live in one of the buildings.

(b) The maximum continuous length of stay for guests is 90 days.

(c) Each guest unit must be accessed by a common corridor or outside door rather than through another guest unit or dwelling unit.

(d) Food service is limited to breakfast and/or snacks and may be served only to overnight guests.

(e) A single non-illuminated identification sign up to four square feet in area may be mounted onto each building.

### **Sec. 34-1806. Replacing a nonconforming hotel/motel.**

(a) A nonconforming hotel/motel can be replaced with a new building in one of the following manners:

- (1) In full conformance with all current provisions of this code as they apply to a new hotel/motel on vacant land; or
- (2) In the same manner as provided for enlargements to the various types of nonconforming buildings as provided in § 34-3234; or
- (3) As provided in the *pre*-disaster buildback regulations found in § 34-3237 or the *post*-disaster buildback regulations found in § 34-3238.

(b) If a nonconforming hotel/motel is being replaced by a multiple-family building, the existing number of guest units cannot be used as the basis for rebuilding more dwelling units than are permitted on undeveloped land by the Fort Myers Beach Comprehensive Plan. The equivalency factors in § 34-1803 are not applicable to replacement of an existing hotel/motel with a new multiple-family building.

### **Sec. 34-1807. Conversions of existing buildings.**

(a) Any hotel or motel proposing to parcelize its guest units to timeshare units or to a hotel condominium does not need to comply with the special parcelization requirements of § 34-636.

(b) Any hotel or motel proposing to convert its guest units to dwelling units, or any residential building proposing to convert its dwelling units to hotel/motel guest units, will be required to comply with density limitations of the Fort Myers Beach Comprehensive Plan, all applicable parking regulations, and all other regulations of this code including equivalency factors that affect the allowable number of hotel/motel guest units.

### **Secs. 34-1808--34-1830. Reserved.**



## DIVISION 20. LIGHTING STANDARDS

### **Sec. 34-1831. Purpose and applicability of division.**

(a) **Purpose.** The purposes of this division are:

- (1) to curtail and reverse the degradation of the night time visual environment by minimizing light pollution, glare, and light trespass through regulation of the form and use of outdoor lighting, and
- (2) to conserve energy and resources while maintaining night-time safety, utility, security, and productivity.

(b) **Applicability.** All new luminaires, regardless of whether a development order is required, must comply with the provisions and standards of this division.

(c) **Exemptions.** The following are generally exempt from the provisions of this division:

- (1) Emergency lighting required for public safety and hazard warning luminaires required by federal or state regulatory agencies;
- (2) Outdoor light fixtures producing light directly by the combustion of fossil fuels such as kerosene and natural or bottled gas;
- (3) Low wattage holiday decorative lighting fixtures (comprised by incandescent bulbs of less than 8 watts each or other lamps of output less than 100 lumens each) used for holiday decoration; and
- (4) Lighting for public roads except as provided in § 14-77.

### **Sec. 34-1832. Definitions.**

The following words, terms, and phrases, when used in this division, shall have the following meanings, unless the context clearly indicates a different meaning:

**Back-lighted** means a surface that is at least partially transparent and is artificially illuminated from behind.

**Direct light** means light emitted directly from the lamp, off the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

**Footcandle** means the quantify of light striking a surface, measured in lumens per square foot.

**Full cutoff** means that a light fixture in its installed position does not emit any light, either directly or by reflection or diffusion, above a horizontal plane running through the lowest light-emitting part of the fixture. Additionally, the fixture in its installed position does not emit more than 10% of its total light output in the zone between:

- (1) the horizontal plane through the lowest light-emitting part of the fixture, and
- (2) 10 degrees below the horizontal plane (80 degrees above the vertical plane).

**Lumen** means a unit of light emission. For example, incandescent light bulbs with outputs of 60, 75, and 100 watts emit approximately 840, 1170, and 1690 lumens respectively.

**Luminaire** means a complete unit for producing artificial light, commonly referred to as a lighting fixture.

**Mercury vapor** means a high-intensity discharge light source that is filled with mercury gas under pressure and which emits a blue/white light.

**Non-essential lighting** means lighting that is not necessary for an intended purpose after the purpose has been served. For example, lighting for a business sign, architectural accent lighting, and parking lot lighting may be considered essential during business or activity hours, but is considered non-essential once the activity or business day has concluded.

**Shielded** means that an outdoor light fixture that is fully and permanently blocked by a physical device or by its integral design from discharging light in specific directions.

## Sec. 34-1833. Technical standards for lighting.

(a) **Generally.** This section contains minimum and maximum standards that apply whenever outdoor lighting is provided.

- (1) In addition to the standards and criteria in this section, there are standards for artificial lighting near sea turtle nesting habitat in ch. 14, article II of this code.
- (2) When specific standards are not addressed in these sources, the standards of the Illuminating Engineering Society of North America (IESNA) will apply.

(b) **Specific standards.**

- (1) **Illuminance.** The following table indicates minimum and maximum illumination levels. These levels are specified for general use categories and are measured in footcandles on the task surface (for example, the lighted parking lot or walkway) with a light meter held parallel to the ground, facing up, unless otherwise specifically stated.

Use/Task	Minimum (average)	
	(1)	(1), (2), (3), (4)
<b>PARKING LOTS – MULTI-FAMILY:</b>		
Medium vehicular/pedestrian activity	0.8	3.2
Low vehicular/pedestrian activity	0.3	1.2
<b>PARKING LOTS – COMMERCIAL/ INSTITUTIONAL/ MUNICIPAL:</b>		
Medium activity, e.g., major shopping districts, cultural/civic/ recreational facilities	0.8	3.2
Low activity, e.g., neighborhood retail, offices, employee parking, school/church parking	0.3	1.2
<b>NON-RESIDENTIAL WALKWAYS &amp; BIKEWAYS</b>	0.3	1.5
<b>CANOPY OVER FUEL PUMPS</b>	6.0	30.0

### NOTES:

(1) The specified illumination levels are the initial levels to be measured at the time of final inspection for a certificate of compliance. Outdoor lighting must be maintained so the average illumination levels do not increase above the specified maximum values. The minimum illumination levels may decrease over time consistent with the Light Loss Factor (LLF) associated with the installed fixtures.

(2) *In no case may the illumination exceed 0.5 footcandles measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property may not exceed 0.2 footcandles measured at 10 feet from the property line onto the adjacent residential property.*

(3) *Maximum values listed in this column are the average of actual measurements taken throughout the lighted area at the time of final inspection.*

(4) *Where all-night safety or security lighting is to be provided, the lighting intensity levels should provide the lowest possible illumination to discourage crime and undesirable activity and to effectively allow surveillance, but may not exceed 50 percent of the levels normally permitted for the use as specified in this code.*

- (2) **Lamp standards.** Lamp types and colors must be in harmony with the adjacent community, any special circumstances existing on the site, and with surrounding installations. Lamp types must be consistent with the task and setting and should not create a mix of colors unless otherwise specifically approved by the director for a cause shown. Specifically, mercury vapor lamps are prohibited. Lighting of outdoor recreational facilities (public or private) such as athletic fields and tennis courts is exempt from the lamp type standards provided that all other applicable provisions are met.

- (3) **Luminaire (fixture) standards.** Fully shielded, full cutoff luminaires with recessed bulbs and flat lenses are the only permitted fixtures for outdoor lighting, with the following exceptions:
- Luminaires that have a maximum output of 260 lumens per fixture (the approximate output of one 20-watt incandescent bulb), regardless of number of bulbs, may be left unshielded provided the fixture has an opaque top to keep light from shining directly up.
  - Luminaires that have a maximum output of 1,000 lumens per fixture (the approximate output of one 60-watt incandescent bulb), regardless of number of bulbs, may be partially shielded, provided the bulb is not visible, and the fixture has an opaque top to keep light from shining directly up.
  - Sensor-activated lighting may be unshielded provided that:
    - The light is located in such a manner as to prevent direct glare and lighting into properties of others or into a public right-of-way, and

- The light is set to only go on when activated and to go off within five minutes after activation has ceased, and
- The light must not be triggered by activity off the property.

- d. Flood or spot luminaires with a lamp or lamps rated at 900 lumens or less may be used except that no spot or flood luminaire may be aimed, directed, or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on public ways, or directed skyward, or directed towards the shoreline areas.

- The luminaire must be redirected or aimed so that illumination is directed to the designated areas and its light output controlled as necessary to eliminate such conditions.
- Illumination resulting from such lighting must be considered as contributing to the illumination levels specified herein.

- e. All externally illuminated signs must be lighted by shielded fixtures mounted at the top of the sign and aimed downward. Illumination resulting from sign lighting must be considered as contributing to the illumination levels specified herein.

- f. Fixtures used to accent architectural features, materials, colors, style of buildings, landscaping, or art must be located, aimed, and shielded so that light is directed only on those features. Such fixtures must be aimed or shielded to minimize light spill onto adjacent properties or into the night sky in conformance with illumination and luminaire standards.

- g. All non-essential exterior commercial lighting must be turned off after business hours.

- (4) **Luminaire mount standards.** The following standards apply to luminaire mountings.
- Freestanding luminaires.** Light poles must be placed on the interior of the site. When light poles are proposed to be placed on the perimeter of the site, specific consideration should be addressed to compliance with the illumination standards at the property line and off the property onto adjacent



residential property. The maximum height of light poles for parking lots and vehicular use areas may not exceed 15 feet measured from the ground level directly below the luminaire to the bottom of the lamp itself (see additional restrictions in ch. 14 for luminaires near sea turtle nesting habitat). Light poles located within 50 feet of a residentially zoned property or use may not exceed 12 feet. Poles used to illuminate pedestrian walkways may not exceed 12 feet. Lighting of outdoor recreational facilities (public or private) such as athletic fields and tennis courts is exempt from the mounting height standards provided that all other applicable provisions are met.

- b. **Building-mounted luminaires.** These luminaires may only be attached to the building walls and the top of the fixture may not exceed the height of the parapet for flat roofed buildings or the lowest point on the nearest sloped roof.
- c. **Canopy lighting.** Luminaires mounted on the underside of a canopy must be fully shielded full cutoff fixtures. As an alternative (or supplement) to canopy ceiling lights, indirect lighting may be used where the light is beamed upward and then reflected down from the underside of the canopy. When this method is used, light fixtures must be shielded so that direct illumination is focused exclusively on the underside of the canopy. No part of the canopy may be back-lighted. Lights may not be mounted on the top or sides (fascias) of the canopy. The sides (fascias) of the canopy may not be illuminated in any manner.
- d. **Trees and landscaping.** To avoid conflicts, locations of all light poles and fixtures must be coordinated with the locations of all trees and landscaping whether existing or shown on the landscaping plan. Vegetation screens may not be employed to serve as the means for controlling glare. Glare control must be achieved through the use of such means as cutoff fixtures, shields, and baffles, and appropriate application of fixture mounting height, wattage, aiming angle, and fixture placement.

## Sec. 34-1834. Permits for lighting.

(a) **Development order and building permit criteria.** The applicant for any development order or building permit involving outdoor lighting fixtures, must submit as part of the application evidence that the proposed work will comply with the outdoor lighting standards of this code. Specifically the submission must include the following:

- (1) Plans indicating the location on the premises and the type of illuminating devices, fixtures, lamps, supports, reflectors, and other devices.
- (2) A detailed description of the illuminating devices, fixtures, lamps, supports, reflectors, and other devices. The description must include manufacturer's catalogue cuts and drawings, including pictures, sections, and proposed wattages for each fixture.
- (3) All applications for development orders or building permits, except for single-family and two-family building permits, must provide photometric data, such as that furnished by the manufacturer of the proposed illuminating devices, showing the angle of cut-off and other characteristics of the light emissions including references to the standards contained herein.
- (4) All applications for development orders or building permits, except for single-family and two-family building permits, must provide photometrics in initial footcandles output for all proposed and existing fixtures on-site shown on a 20' by 20' grid on an appropriately scaled plan. On-site lighting to be included in the calculations must include, but is not limited to, lighting for parking lot, canopies, and building-mounted and recessed lighting along the building facades and overhangs. The photometric plan must include a table showing the average, minimum, and maximum footcandles of illumination on the site and within 50 feet of the site and the calculations deriving the averages. Evidence must be provided demonstrating that the proposed lighting plan will comply with the requirements of this code. The use of a light loss factor (LLF) is not permitted in these photometrics. This photometric plan must be coordinated with the landscape plan to identify the location of trees and other landscaping features with respect to the lighting devices. Rejection or

acceptance of the photometric plan will be based on this code.

(b) **Compliance.**

- (1) Prior to the final inspection for a certificate of compliance pursuant to § 10-183, site-verified footcandle readings must be provided demonstrating that the outdoor lighting, as installed, conforms with the proposed photometrics and the letter of substantial compliance provided by a registered professional engineer must include a certification that the outdoor lighting is in compliance with this code.
- (2) If any outdoor light fixture or the type of light source therein is changed after the permit or development order has been issued, a change request or development order amendment must be submitted for approval together with adequate information to assure compliance with this code. This request or amendment must be approved prior to the installation of the proposed change.
- (3) Outdoor lighting must be maintained in compliance with this code.

(c) **Existing outdoor lighting.** Light pole height requirements do not apply to existing light poles. Existing light fixtures must be brought into compliance with this code by January 1, 2010. Any fixtures replaced after the date of the adoption of this code must be replaced with fixtures that comply with the standards established herein. Illuminance levels specified in this code apply to all outdoor lighting.

**Secs. 34-1835--34-1860. Reserved.**

**DIVISION 21. MARINE FACILITIES,  
AND LIVE-ABOARD VESSELS\***

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*\*Cross reference(s)--Marine facilities and structures generally, ch. 26; marine sanitation, § 26-111 et seq.*  
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**Sec. 34-1861. Boats, floating structures, floating equipment, and live-aboards.**

(a) No boat, floating structure, or other floating equipment shall be moored to mangroves except for emergency purposes.

(b) No person shall discharge or permit or control or command to discharge any raw sewage, garbage, trash, or other waste materials into the waters of the town.

(c) No boats, floating structures, or other floating equipment designed to accommodate one or more living units, or designed or used for retail sales, shall be permitted to anchor, moor, tie up, or otherwise be attached to any wharf, pier, or other structure emanating from real property or to real property itself within the town except in conformity with the regulations contained in this chapter and all other applicable town ordinances.

(d) Except as provided in this subsection, no person shall live aboard any vessel under his command or control, which is moored to real property or to any dock, pier, seawall, or other structure attached to real property in the town. The provisions of this subsection shall not apply to:

- (1) Live-aboard vessels equipped with a discharge device that is listed by the United States Coast Guard as an approved marine sanitation device, and occupied by a licensed captain and his immediate family;
- (2) Commercial vessels, such as commercial fishing boats, tugs, barges, salvage vessels, passenger vessels, or cargo vessels, when used in commerce and navigation; or
- (3) The mooring of any vessel necessitated by an emergency.
- (4) Live-aboard vessels at a marina which is properly zoned for marina uses (see § 26-116).
- (5) Live-aboard vessels lawfully occupying a berth in a public mooring field managed by

the town, provided the vessel is in compliance with all regulations.

The exceptions granted by subsections (d)(1) and (2) of this section are not intended to apply to personal fishing boats used for recreation or to fishermen with marine products licenses.

**Sec. 34-1862. Reserved.**

**Sec. 34-1863. Construction and maintenance of docks, seawalls, and other structures designed for use on or adjacent to waterways.**

Construction, placement, erection, and maintenance of docks, mooring piles, seawalls, watercraft landing facilities, and other structures designed for use on or adjacent to waterways shall be in compliance with established building permit procedures and with ch. 26, article II. See also division 2 of this article regarding accessory uses, buildings, and structures.

**Secs. 34-1864--34-1890. Reserved.**

**DIVISION 22. RESERVED**

**Secs. 34-1891--34-1920. Reserved.**

**DIVISION 23. MOBILE HOMES**

**Sec. 34-1921. Mobile home subdivisions.**

(a) New or expanded mobile home subdivisions are not allowed in the Town of Fort Myers Beach.

(b) A mobile home cannot be substantially improved or placed on any lot in any subdivision except:

- (1) to replace an existing mobile home, provided that:
  - a. a mobile home is in lawful existence on that lot and the lot has not been vacant for more than nine months,
  - b. the replacement or substantially improved mobile home is elevated so that its lowest floor is at or above the base flood elevation, in accordance with § 6-472(2)a, and
  - c. the move-on permit requirements of § 34-1923 are met; or
- (2) on a temporary basis in accordance with § 34-3046.

**Sec. 34-1922. Mobile home parks.**

(a) New or expanded mobile home parks are not allowed in the Town of Fort Myers Beach.

(b) A mobile home cannot be substantially improved or placed in any existing mobile home park except in some parts of the VILLAGE zoning district in accordance with the regulations set forth in subdivision III of division 5 of article III of this chapter, and in accordance with the elevation requirements of § 6-472(2)b. and the move-on permit requirements of § 34-1923.

**Sec. 34-1923. Move-on permit requirements.**

(a) This section applies to mobile homes, and also to park trailers as that term is defined in § 34-694, in those zoning districts where either are permitted.

(b) No mobile home shall be relocated or moved onto any property without first obtaining a move-on permit from the director.

(c) All mobile homes shall be tied down in accordance with local, state, and federal regulations, including § 6-471(2) of this code and F.S. § 320.8325.

- (d) All mobile homes shall have removable skirting around the entire perimeter.
- (1) Skirting shall be of a durable material such as decorative block, concrete block, fiberglass, aluminum or vegetation. Junk doors or other scrap material is prohibited.
- (2) Skirting shall be maintained at all times by the resident.

**Secs. 34-1924--34-1950. Reserved.**

## DIVISION 24. MOVING OF BUILDINGS

### **Sec. 34-1951. Building relocation permit.**

(a) ***Compliance with applicable regulations.***  
When a building is moved to any location within the town, the building or part thereof shall be made to conform to applicable provisions of the Florida Building Code and to all the provisions of this chapter within 90 days of the date of issuance of the moving permit.

(b) ***Contents of application.*** Any person desiring to relocate or move a building must first file with the director a written application on an official form. The application must include the following information furnished by the applicant and must be accompanied by the required application fee:

- (1) The present use of the building.
- (2) The proposed use of the building.
- (3) The building's present location and proposed new location by STRAP number, as well as by street numbers.
- (4) Certified survey of the proposed site with ground elevations, flood zone, and required elevation.
- (5) Plot plan showing lot dimensions, setbacks, location of existing structures, and location of building drawn to scale no more than 1/2-inch equals one inch and no less than one inch equals 50 feet. The plot plan should depict the roof overhang as well as the foundation.
- (6) Construction details, drawn to a scale of no larger than one-half inch equals one foot and no smaller than one-eighth inch equals one foot, including the following:
  - a. Foundation layout with connection details.
  - b. Floor plan, existing and proposed.

- c. Mechanical plans, including air conditioning, electric system, and plumbing plans.
- d. Elevations, front, side, and rear.
- e. Flood elevations for the proposed new location shall be shown on the foundation layout and elevations.
- (7) Current termite inspection by licensed pest controller.
- (8) Photographs showing all sides of the building and the site where the building is proposed to be located.
- (9) Proof of notice to all owners of property abutting or across the street from the site where the building is proposed to be located.
- (10) A detailed written statement describing all proposed exterior alterations to the building after it is relocated. At a minimum, these details shall include methods and materials, and construction details as appropriate, regarding:
  - a. The height and method of elevating the building above grade;
  - b. Any proposed enclosure of space below the lowest habitable floor;
  - c. Any changes to exterior doors, windows, siding, awnings, and shutters;
  - d. Any porches or decks to be built, modified, or eliminated; and
  - e. Any changes to the roof other than routine maintenance or replacement with similar materials.

(c) ***Criteria for suitability of building to proposed site.*** The town manager shall determine whether the building to be relocated is suitable for its proposed site under one of the following categories:

- (1) ***Historic buildings.*** For buildings that, after relocation, would be eligible for historic designation pursuant to § 22-204(a)-(d):
  - a. Is the proposed use of the building permitted by the zoning district?
  - b. Has the property owner consented to historic designation of the site after the building is relocated?
  - c. Has the property owner proposed improvements that restore the building while retaining its essential historic characteristics, consistent with the criteria in § 22-101–103?

- (2) **Other buildings.** For all other buildings:
- Is the proposed use of the building permitted by the zoning district and similar to existing uses in the neighborhood?
  - Is the building reasonably compatible with the neighborhood when considering factors such as its size, age, and condition? If not, has the property owner proposed sufficient renovations or improvements to the building to achieve compatibility?

The town manager may place reasonable conditions on suitability decisions to bring applications up to these criteria or to ensure the performance of proposed improvements or renovations. Suitability decisions pursuant to this subsection are administrative decisions which may be appealed in accordance with § 34-86.

(d) **Inspection of building.** The director will have the building inspected to determine:

- If the building can be brought into compliance in all respects with this chapter and other town regulations pertaining to the area to which the building is to be moved.
- If the building is structurally sound and either complies with applicable portions of the Florida Building Code and other codes adopted by the town or can be brought into compliance with such codes.

(e) **Rejection of application.** The director must reject any application if:

- The building fails to meet the suitability criteria in subsection (c), as determined by the town manager, or the inspection criteria in subsection (d) of this section;
- In the opinion of the director, the moving of any building will cause serious injury to persons or property;
- The building to be moved has deteriorated due to fire or other element to more than 50 percent of its market value, as that term is defined in § 6-405; or
- The moving of the building will violate any of the requirements of the Florida Building Code, this code or other applicable town regulations.

Except for decisions as to the Florida Building Code, such decisions are administrative decisions which may be appealed in accordance with § 34-86.

(f) **Approval of building relocation permit.**

- Upon approval of the application for building relocation, a licensed building relocation contractor representing the applicant must:
  - Apply for and receive all required permits from the departments of transportation of the county or state, if county or state roads will be used during the relocation;
  - Pay the required fees and obtain the building relocation permit and appropriate sub-permits.
- Any building being moved for which a permit was granted may not remain in or on the streets for more than 24 hours unless an extension of an additional 24 hours is approved by the town manager.

**Secs. 34-1952--34-1980. Reserved.**

## DIVISION 25. OFF-STREET LOADING AREAS

**Sec. 34-1981. Applicability of division.**

(a) The off-street loading requirements of this division shall apply to commercial, and other nonresidential uses.

(b) Establishments are encouraged to schedule deliveries before or after their normal business hours. Deliveries that are made during normal hours may not obstruct parking aisles or parking entrances.

**Sec. 34-1982. Access.**

(a) Street access to off-street loading areas shall observe the same provisions as set forth for parking lots in § 34-2013.

(b) Except as provided in § 34-1987, off-street loading areas shall be spatially or physically separated from parking areas and pedestrian walkways.

**Sec. 34-1983. Lighting, maintenance, and drainage.**

Site lighting, maintenance, and drainage required for off-street loading areas shall comply with the provision of §§ 34-2015 and 34-2017.

**Sec. 34-1984. Other use of loading areas.**

Except as provided in § 34-2019, off-street loading areas shall not be utilized for the sale, repair, dismantling, or servicing of any vehicles or equipment, except on an emergency or temporary basis.

**Sec. 34-1985. Screening.**

When any off-street loading area is located adjacent to a residential use or zoning district, and is not otherwise entirely visually screened from it at ground level, there shall be provided a continuous visual screen along the lot line abutting the residential use in accordance with division 17 of this article or ch. 10, whichever is the most restrictive.

**Sec. 34-1986. Loading area required; loading plan; location of loading area.**

(a) All commercial and other nonresidential uses on sites larger than 1 acre shall be provided with an off-street loading area for receiving and shipment of commodities.

(b) A plan for off-street loading areas shall be provided as part of the site plan submitted in accordance with the regulations and procedures set forth in ch. 10, or, if the development is exempt from ch. 10, then a plan shall be submitted at time of application for a building permit and be reviewed by the director for consistency with this division and this chapter.

(c) The location of all off-street loading areas shall embody the following provisions:

- (1) The required loading area shall be provided on the same lot or parcel it serves or within 300 feet of that parcel.
- (2) The surfaced portions of all loading areas, excluding driveways, shall observe a 20-foot setback from all right-of-way lines and a ten-foot setback from all property under separate ownership or control.
- (3) Loading spaces shall be so located as not to obstruct or otherwise hinder or endanger the movement of vehicles and pedestrians.
- (4) Off-street loading areas shall not be placed between the principal building and a street right-of-way line.

**Sec. 34-1987. Number of spaces.**

(a) Establishments which normally receive or ship commodities via small panel trucks or vans shall not be required to provide off-street loading areas and may utilize the parking area, provided:

- (1) Deliveries normally are received before or after normal hours open to the public.
- (2) No delivery truck remains in the parking lot for more than four hours.
- (3) Deliveries do not interfere with normal pedestrian or vehicle movements.

(b) Establishments which receive or ship goods via large semitrailer or full trailer trucks shall provide a minimum of one loading space for the first 10,000 square feet of floor area, plus one space for each additional 20,000 square feet of floor area or major fraction thereof.

**Secs. 34-1988--34-2010. Reserved.**

## Parking

### DIVISION 26. PARKING

#### Sec. 34-2011. Types of parking facilities.

Parking facilities in the Town of Fort Myers Beach take a variety of forms, generally classified as follows:

(a) **Single-purpose parking lots.** Single-purpose parking lots are designed to serve individual businesses, condominiums, or shopping centers. Single-purpose parking lots are usually located on the same site as the use they serve and may include parking spaces under a building or in a parking garage.

- (1) Most single-purpose parking lots are considered by this code to be accessory uses of land (§ 34-1171) and thus can be built to serve any permitted principal use on the same parcel of land.
- (2) Some single-purpose parking lots serve two or more non-abutting parcels, as provided in § 34-2018 for joint-use parking lots.
- (3) Surplus spaces in some single-purpose parking lots may be rented to the general public during peak periods, as provided in subsection 34-2019(a).

(b) **Shared parking lots.** Shared parking lots are open to the public, generally for a fee, regardless of the destination of the person parking there. Shared parking lots may be operated as a private business or by a governmental entity, and may include a surface parking lot and/or a parking garage.

- (1) Seasonal shared parking lots may obtain temporary use permits administratively for up to three-year periods as provided in § 34-2022 of this chapter.
- (2) Permanent shared parking lots are considered a principal use of a parcel of land and may be approved in certain zoning districts by special exception.
- (3) Parking garages that operate in whole or part as shared parking lots are also considered a principal use of land and may be approved only through the Commercial Planned Development zoning district (see §§ 34-620(d) and 34-676(e))

(c) **On-street parking.** Governmental entities sometimes provide on-street parking spaces, usually with parking meters, that are available for use by the public regardless of their destination. On-street parking is closely related to the functioning of the adjoining street and is provided as a public works project rather than being regulated as a land development activity by this code.

#### Sec. 34-2012. Definitions.

For purpose of this division only, certain words or phrases are defined as follows:

*Employees* means the regular working staff, paid, volunteer, or otherwise, at maximum strength and in full-time equivalent numbers, necessary to operate, maintain, or service a given facility or use under normal levels of service.

*High turnover* applies to parking lots where vehicles are parked for relatively short periods of time ranging from a few minutes to several hours. Customer parking for retail stores, restaurants, bars, offices, or similar establishments is considered to be high turnover.

*Low turnover* applies to parking where vehicles are parked for relatively long periods of time, such as employee parking during the day, uses such as beach parking or marina parking where customers typically leave their cars for periods of several hours or more, and overnight parking in residential developments.

*Parking aisle* means an accessway within a parking lot which provides direct access to individual parking spaces.

*Parking lot* means an area of land designed, used, or intended for parking five or more vehicles.

*Parking lot entrance* means the accessway which provides ingress or egress from a street right-of-way or easement to a parking lot.

*Parking space* means an area of land designed or intended for parking one vehicle. Some parking spaces are designated as disabled spaces.

## Parking

### Sec. 34-2013. Access.

(a) Each parking lot shall have a distinct parking lot entrance. Such entrance shall meet the requirements of ch. 10, as well as the following:

- (1) Minimum width at the property line for one-way entrances is 10 feet.
- (2) Minimum width at the property line for two-way entrances is 20 feet.
- (3) Maximum width at the property line is 25 feet.

The director may determine that traffic volumes, truck traffic, or other special circumstances warrant other requirements.

(b) Parking lot entrances shall not exceed a six percent grade for 20 feet into any lot or parcel, nor shall a parking lot entrance enter a street right-of-way or easement at an angle of less than 90 degrees unless a lesser angle is approved by the director.

### Sec. 34-2014. Parking plan.

A parking plan shall be required for all uses, except single-family residence and two-family dwelling units, and shall be submitted for review and approval in accordance with ch. 10. Developments which are not required to be approved in accordance with chapter 10 shall submit plans to the director prior to issuance of a building permit. The plan shall accurately designate the required parking spaces, parking aisles, and parking lot entrance, as well as the relation of any off-street parking facilities to the uses or structures such facilities are designed to serve.

### Sec. 34-2015. Location and design.

The location and design of all parking lots shall embody the following provisions:

- (1) **Location of single-purpose parking lots.** Parking spaces that are required to support specific land uses (see § 34-2020) shall be provided on the same premises and within the same or similar type zoning district as the use they serve, except in the DOWNTOWN zoning district as provided in § 34-676(a). Joint-use parking lots are regulated by § 34-2018.

- (2) **Location of shared parking lots.** Shared parking lots may be constructed as follows:
  - a. Seasonal shared parking lots may obtain temporary use permits administratively for up to three-year periods as provided in § 34-2022 of this chapter. The location and certain design features of seasonal parking lots are regulated by § 34-2022.
  - b. Permanent shared parking lots are considered a principal use of a parcel of land and may be approved in certain zoning districts by special exception.
  - c. Parking garages that operate in whole or part as shared parking lots are also considered a principal use of land and may be approved only through the CPD (commercial planned development) zoning district (see §§ 34-620(d) and 34-676(e)).
- (3) **Design.** In addition to the requirements set forth in this division, all parking lots shall be designed in accordance with the buffer, landscaping, drainage, and other requirements set forth in ch. 10.
- (4) **Lighting.** If the parking lot is to be used at night, adequate lighting shall be provided for the driveways, ingress, and egress points, and parking areas of all commercial and industrial uses. Such lighting shall be so arranged and directed as to eliminate glare on any other use, and must comply with applicable sea turtle lighting restrictions in ch. 14.
- (5) **Stacking.** All individual parking spaces shall be accessible from a parking aisle intended to provide access to the space. Stacking of vehicles (one behind the other) shall be permitted only where each dwelling unit has a specific garage or driveway appurtenant to it and in valet parking facilities wherein parking is performed only by employees of the facility.
- (6) **Exiting.** All parking lots shall be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion, except where approved by the director under the following conditions:
  - a. The right-of-way is a local street and:
    1. there is insufficient room on the parcel for vehicles to turn and exit in a forward direction, and



## Parking

2. the number of parking spaces backing out are no more than the minimum required by this division to serve existing buildings; or
  - b. The parking spaces are in the "Pedestrian Commercial" category of the comprehensive plan and do not unduly interfere with critical congested road segments or the normal usage of existing or proposed sidewalks.
- (7) **End spaces.** Parking lots utilizing 90° parking with dead-end aisles shall provide a turning bay for those spaces at the end of the aisle.
- (8) **Pedestrian system.** In any parking lot where more than one tier of parking spaces is to be developed, walkways shall be provided which accommodate safe and convenient pedestrian movement from vehicles to building entrances and other walking destinations. If these walkways cross major parking aisles, the walkway shall be clearly differentiated from the surface of the aisle.

<b>DIMENSION (in feet):</b>		<b>45°</b>	<b>60°</b>	<b>75°</b>	<b>90°</b>
Stall width	<b>A</b>	8.5	8.5	8.5	8.5
Stall width (parallel to aisle)	<b>B</b>	12.0	9.8	8.8	8.5
Aisle width (one-way travel)	<b>C</b>	11.0	14.0	17.0	20.0
Stall depth (interlock)	<b>D</b>	15.3	17.5	18.6	18.0
Stall depth (to wall)	<b>E</b>	17.5	19.1	19.4	18.0
Module (interlocking)	<b>F</b>	41.6	49.0	54.2	56.0
Module (wall to interlock)	<b>G</b>	43.9	50.6	55.0	56.0
Module (wall to wall)		46.0	52.2	55.8	56.0

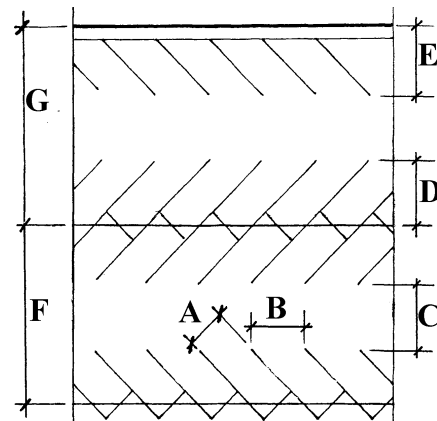


Figure 34-31

### Sec. 34-2016. Dimensional requirements; delineation of parking spaces.

In addition to satisfying all other provisions of this division, the arrangement and spacing of off-street parking lots shall conform to the following requirements:

- (1) **Minimum dimensions.** Minimum aisle widths and parking space dimensions shall be as follows:

<b>Angle of Parking</b>	<b> AISLE WIDTHS</b>		<b> PARKING SPACES</b>	
	<b>One-Way (feet)</b>	<b>Two-Way (feet)</b>	<b>Width (feet)</b>	<b>Length (feet)</b>
<b>Parallel</b>	10	20	7	20
<b>45° -50°</b>	11	20	8.5	
<b>55° -60°</b>	14	22	8.5	
<b>70° -75°</b>	17	22	8.5	
<b>90°</b>	20	22	8.5	18

- (2) **Effect of minimum dimensions on size of parking lots.** The following table illustrates the effect of the minimum aisle and parking space dimensions on the size of parking lots, keyed to the dimensions indicated in Figure 34-30.

- (3) **Disabled space dimensions.** Individual disabled parking space dimensions shall be 12 feet by 18 feet. Parking access aisles must be no less than 5 feet wide and must be part of an accessible route to the building or facility entrance. These dimensions do not guarantee compliance with the Americans with Disabilities Act (ADA) of 1990.

- (4) **Delineation of spaces.**

a. **Paved parking lots.**

- Parking spaces shall be delineated by all-weather painted lines, not less than four inches in width, centered on the dividing line between spaces.
- Parking spaces for the disabled must be prominently outlined with blue paint, and must be repainted when necessary to be clearly distinguishable as a parking space designated for persons who have disabilities. Signs erected after October 1, 1996 must indicate the penalty for illegal use of these spaces.

## Parking

### b. *Unpaved parking lots.*

1. Perimeter parking spaces in unpaved parking lots shall be delineated by placing a parking block three feet from the end of the parking space and centered between the sides of the space.
2. If a perimeter space abuts a structure, the space may be indicated on the structure, in which case parking blocks shall not be required.

### Sec. 34-2017. **Parking lot surfaces.**

(a) ***High turnover parking lots.*** Except as provided in this section, all high turnover parking lot aisles and parking spaces shall be provided with a paved surface, except for the open space beyond parking blocks. The term “paved” shall be interpreted to mean and include asphalt, concrete, brick, paving blocks, porous (pervious) asphalt or concrete, and other similar treatments. Clean (washed) angular gravel (such as FDOT #57 stone) may also be used if stabilized as provided in subsection (b)(1).

- (1) Any parking spaces that may be permitted, seaward of the 1978 coastal construction control line shall be stabilized with best management practices approved by the director.
- (2) All disabled parking spaces, including disabled parking spaces seaward of the coastal construction control line, shall be provided without gaps or holes that would create a danger to the user.

(b) ***Low turnover parking lots.*** Due to the low volume of vehicle turnover in this type lot, alternative unpaved surfaces may also be permitted provided that the areas are adequately drained and continuously maintained in a dustfree manner.

- (1) Alternative surfaces may include stabilized surfaces of grass or clean (washed) angular gravel over a well-drained base, or other similar porous materials. Stabilization may be accomplished by turfblocks (concrete or plastic) or proprietary cellular or modular porous paving systems installed in accordance with manufacturers’ specifications.
- (2) Crushed limerock that has not been washed or otherwise processed to remove fine

particles will be permitted as a surface material only when designed, placed, and maintained in a manner that will:

- a. prevent the flow of sediment-laden runoff from the lot, and
  - b. keep the surface dust-free at all times.
- (3) The use of unimproved surfaces such as sand or dirt as approved parking shall be prohibited.
  - (4) Disabled spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.

### (c) ***Reduced surfacing standards***

- (1) The director is authorized to permit portions of high turnover parking lots (including parking lot aisles), to meet the surfacing standards for low turnover parking lots (§ 34-2017(b), above) when the reduced surfacing standard will be used in those portions of the parking lot expected to receive the lightest usage, such as overflow or employee parking areas.
- (2) This subsection may not be construed inconsistently with the Americans with Disability Act (ADA) of 1990.

(d) ***Reservation of spaces for future use.*** When a use or activity is required by this chapter to provide more than ten high turnover parking spaces, the director may approve leaving up to 25 percent of the required spaces as landscaped areas reserved for future use, provided that:

- (1) The applicant clearly shows the reserved parking spaces on the site plan;
- (2) The reserved parking areas shall not be counted towards the minimum open space or landscaping or buffering requirements of this chapter or chapter 10;
- (3) All drainage facilities shall be calculated and built as though the reserved parking areas were impervious surfaces; and
- (4) The reserved parking areas shall not be used for any purpose other than landscaped open space or temporary overflow parking during special holiday seasons or sales.

Should the property owner decide to pave the reserved area for parking, he shall submit the original site plan or development order approval to the director, who is authorized to approve the paving provided that such paving does not

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include any new entrances onto a public street. If the parking areas does involve new entrances, then a limited review development order is required.

### **Sec. 34-2018. Joint use of parking lots.**

(a) A single-purpose parking lot can provide some or all of the required parking spaces for two or more unrelated businesses, provided that such joint-use parking lot:

- (1) is built on a site where a commercial parking lot is permitted, and
- (2) is placed on the site so as not to violate any applicable build-to lines or block visibility of vehicles (see § 34-3131), and
- (3) is built to the same standards as a single-purpose parking lot, and
- (4) is located within 750 feet of each use.

(b) The peak parking demands of the different uses must occur at different times. The director may require an applicant to provide a technical analysis of the timing and magnitude of the proposed parking demands.

(c) Applications for joint-use parking lots must include:

- (1) A notarized statement from all property owners involved indicating the use of each property and forecasting that the peak level of activities of each separate building or use which create a demand for parking will occur at different times.
- (2) A draft joint-use parking agreement, acceptable to the town attorney, that:
  - a. specifically identifies the designated spaces that are subject to the agreement;
  - b. includes a statement indicating that the parties understand that these designated spaces cannot be counted to support any use other than those identified in the agreement;
  - c. identifies the current property uses, property owners, and the entity responsible for maintenance of the parking area.
  - d. includes a backup plan to provide sufficient parking if the joint agreement is violated by either party.
- (3) Upon approval of the agreement by the town attorney, the agreement(s) must be recorded

in the Lee County public records at the applicant's expense.

### **Sec. 34-2019. Other use of parking lots.**

(a) Parking spaces that are not in daily use and are located in parking lots having ten or more parking spaces and meeting the other requirements of this division may be rented to the general public during peak periods.

(b) The following structures and uses may be approved in parking lots by the director provided that a site plan is submitted showing that the structure will not reduce the parking spaces required for the principal use, or create a traffic or pedestrian hazard:

- (1) Charitable or other similar dropoff collection stations.
- (2) Aluminum can or other similar receiving machines or facilities.
- (3) Photo pickup stations.
- (4) Telephone booths and pay telephone stations.
- (5) Automatic teller machines (ATMs).
- (6) Other similar uses which do not unreasonably interfere with the normal functioning of the parking lot.

(c) Except as provided in this section and for ancillary temporary uses as provided in § 34-3048, required parking areas shall not be utilized for the sale, display, or storage of merchandise, or for repair, dismantling, or servicing of any vehicles or equipment. This shall not be interpreted to prohibit a residential property owner from the occasional servicing of his own noncommercial vehicle or conducting normal residential accessory uses.

### **Sec. 34-2020. Required parking spaces.**

(a) *New developments.* New residential and nonresidential uses are required to provide off-street parking spaces in single-purpose parking lots in accordance with the standards specified in this section, as modified by certain reductions as provided in the DOWNTOWN and SANTINI zoning districts (see division 5 of article III).

(b) *Existing developments.* Existing buildings and uses may be modernized, altered, or repaired without providing additional parking spaces,

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provided there is no increase in total floor area or capacity.

- (1) Existing buildings or uses enlarged in terms of floor area shall provide additional parking spaces for the enlarged floor area in accordance with the standards specified in this section.
- (2) When the use of a building is changed to a different use which is required to have more parking than exists, the additional parking shall be provided in accordance with the standards specified in this section.

(c) **Bicycle parking.** Commercial, multifamily, and mixed-use buildings may eliminate one required parking space by providing and maintaining a bicycle rack able to hold four bicycles.

(d) **Minimum parking standards.**

(1) **RESIDENTIAL USES.**

- a. **Dwelling units with individual driveways:**  
The minimum requirement is 2.0 spaces for each dwelling unit. Stacking of vehicles in the driveway is permitted.
- b. **Dwelling units with common parking lots:**  
Minimum requirements are as follows:
  1. Studio or efficiency: 1.0 spaces per unit.
  2. One bedroom: 1.25 spaces per unit.
  3. Two bedrooms: 1.25 spaces per unit.
  4. Three or more bedrooms: 1.5 spaces per unit.
  5. Live/work units: 2.0 spaces per unit.
 Stacking of vehicles is not permitted except as provided in § 34-2015(5).
- c. **Timeshare units:** Parking requirements are the same as for multiple-family buildings. If lock-off accommodations are provided, parking for the lock-off units will be calculated at 0.5 extra spaces per lock-off unit.
- d. **Living units without kitchens:** Living units that do not contain customary cooking facilities within the individual units but instead have a central kitchen for food preparation and where meals are served in a central dining area or individual rooms must calculate parking requirements as follows: one parking space per four residents or four beds (whichever is greater), plus ten percent.

- e. **Group quarters, excluding living units subject to § 34-2020(d)(1)d.** The minimum requirement is one parking space per bedroom or one space per two beds, whichever is greater.

(2) **COMMERCIAL USES.**

- a. **Bars and cocktail lounges.** The minimum requirement is 15 spaces per 1,000 square feet of total floor area. If outdoor seating is provided, an additional one space per four outdoor seats or 75 square feet of outdoor seating area (whichever is greater) must be provided. See also subsection (2)h of this section, pertaining to restaurants, and subsection (4) of this section.
- b. **Bed-and-breakfast inns.** The minimum requirement is 1 parking space for each guest room plus 1 space for the owners' quarters.
- c. **Car washes.** The minimum requirement is two spaces per car wash stall or space, plus drive-through facilities (see subsection (2)d of this section). Each individual car wash stall or space may count as one of the required two parking spaces per stall.
- d. **Drive-through facilities.** Where permitted, any commercial establishment providing drive-through service windows or stalls shall provide separate vehicle stacking for those uses. For the purpose of this section, a stacking unit is defined as 18 feet in length and 9 feet in width. The total number of stacking units required is to be based on the type of business, as follows:
  1. **Banks and financial establishments:** Stacking lanes to accommodate three cars per window.
  2. **Car washes:** Stacking to accommodate one car per service stall or three cars, whichever is greater.
  3. **Restaurants:** New or expanded drive-through facilities are not permitted for restaurants (see § 34-620(g)). For existing drive-through facilities that are being lawfully reconfigured, stacking lanes to accommodate six cars per service lane, with a minimum of four spaces preceding the menu board.
  4. **Other:** Stacking for two cars.

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- e. **Hotels and motels.** The minimum requirement is 1.2 parking spaces for each guest unit up to 450 square feet and 1.5 spaces for each larger guest unit.
  - f. **Offices.** This category includes offices of all types not specifically listed elsewhere, including banks and medical facilities. The minimum requirement is 2 spaces per 1,000 square feet of total floor area. See also subsection (2)d. of this section pertaining to vehicle stacking for drive-through facilities.
  - g. **Personal services.** The minimum requirement is 5 spaces per 1,000 square feet.
  - h. **Restaurants.** With the exceptions noted below, the minimum parking requirements for restaurants is 8 spaces per 1,000 square feet of total floor area plus any outdoor seating area.
    - 1. *Accessory restaurant.* When a restaurant is located within the same building as the principal use, and is clearly provided primarily for the employees and customers of the principal use, no additional parking spaces are required.
    - 2. *Bars and cocktail lounges.* If the restaurant contains a cocktail lounge or bar, the minimum requirement is 8 spaces per 1,000 square feet of total floor area plus 5 additional spaces per 1,000 square feet of floor area used for the bar or cocktail lounge. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates.
  - i. **Retail stores, freestanding.** This subsection applies to individual retail or business establishments. Any retail establishment proposing drive-through facilities shall also meet the requirements of subsection (d)(2)d of this section.
    - 1. *Convenience food and beverage stores.* The minimum requirement is 4 spaces per 1,000 square feet of total floor area. If more than 20% of the total floor area or 600 square feet, whichever is less, is used for the preparation and/or sale of food or beverages in a ready-to-consume state, parking for this area will be calculated the same as a restaurant. One parking space per four pumps will be credited against the required parking.
  - 2. *Other retail or business establishments.* The minimum parking requirement is 3 spaces for each 1,000 square feet of total floor area. Required parking for areas within the principal building which are used only for dead storage and are not available to the public shall be computed at the rate of 2 spaces per 1,000 square feet.
  - j. **Warehousing (mini-warehouses).** The minimum requirement is 1 space per 25 storage units, with a minimum of 3 spaces.
  - k. **Wholesale establishments.** The minimum requirement is 1 space per company vehicle plus 1 space per 1,000 square feet of total floor area.
- (3) **MISCELLANEOUS USES.**
- a. **Educational institutions.**
    - 1. *Public schools.* Parking shall be provided in compliance with state law.
    - 2. *Private or parochial schools and day care centers.* The minimum requirement is one space per employee plus one space for each 40 students.
  - b. **Marinas and other water-oriented uses.** Minimum requirements are as follows:
    - 1. *Boat slips:* One space per two slips.
    - 2. *Dry storage:* One space per six unit stalls.
    - 3. *Charter or party fishing boat services:* One space per three people based on maximum passenger capacity of the boats using the dock or loading facility.
    - 4. *Cruise ships:* ne space per three people based on the maximum passenger and crew capacity of the ship.
    - 5. *Water taxis:* Dedicated parking spaces are not required at stopping points for water taxis or water shuttles.
    - 6. *Other uses:* Other uses including accessory or ancillary marina uses such as restaurants, bars, or lounges, boat sales, etc. must be calculated separately in compliance with this division.
  - c. **Museums, art galleries, libraries, and other similar uses not covered elsewhere:.** The minimum requirement is one parking

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space for each 500 square feet of total floor area.

d. ***Places of worship and religious facilities.***

Refer to division 27 of this article.

e. ***Recreation facilities, indoor.*** The

minimum requirement is one parking space for each 150 square feet of total floor area.

f. ***Theaters, auditoriums, meeting halls, and other similar places of public assembly, not covered elsewhere.*** The minimum

requirement is one parking space for each four seats plus one space per employee

g. ***Carnivals, fairs, and amusement attractions and devices.*** The minimum

requirement is five parking spaces provided for each permanent amusement device.

(4) ***COMBINED USES.*** The number of parking spaces required for combined uses shall be the total of the spaces required for each separate use established by this schedule.

Exceptions are as follows:

a. ***Joint use of parking lots.*** As provided in § 34-2018,

b. ***Multiple-occupancy complexes.*** This subsection applies to multiple-occupancy complexes where five or more individual business establishments are located and which all share a common parking area. Specifically excluded from this subsection are theaters and hotels. Minimum requirements are as follows:

1. If the complex contains less than 25% of its gross floor area as restaurants, bars, and cocktail lounges, 2 spaces per 1,000 square feet.
2. If the complex contains 25% to 50% of its gross floor area as restaurants, bars, and cocktail lounges, 4 spaces per 1,000 square feet.
3. If the complex contains 50% to 75% of its gross floor area as restaurants, bars, and cocktail lounges, 6 spaces per 1,000 square feet.
4. If the complex contains over 75% of its gross floor area as restaurants, bars, and cocktail lounges, 8 spaces per 1,000 square feet.

(5) ***USES NOT SPECIFICALLY LISTED.*** Off-street parking for uses not specifically mentioned in this chapter shall be the same as for the uses most similar to the one sought.

**Sec. 34-2021. Reserved.**

**Sec. 34-2022. Seasonal parking lots.**

(a) Temporary use permits (see §§ 34-3041, and 34-3050) may be issued for seasonal parking lots. Approval of seasonal parking lots can be for a single period of up to 8 months long, commencing on November 15 and continuing until July 15 (subsection 34-2022(b)); or for a single period of up to 3 years on a year-around basis (subsection 34-2022(c)). For the purposes of this section, temporary use permits for seasonal parking lots may also be issued for all or part of such time period and shall not be limited to 30 days as set forth in § 34-3041(d).

(b) A seasonal parking lot approved for a single period of up to 8 months must comply with the following regulations:

- (1) A seasonal parking lot shall only be permitted on commercially zoned property.
- (2) Ingress and egress to seasonal parking lots shall not be through a residential neighborhood or residentially zoned district.
- (3) The applicant must submit to the director a parking plan, drawn to scale, indicating but not limited to the following: the location of access points, ropes, and posts, and the circulation pattern within the parking lot.
- (4) Individual spaces in seasonal parking lots do not need to be delineated provided the end of each space and all aisles are clearly delineated with temporary posts and ropes.
- (5) Seasonal parking lots do not need to be surfaced, and may be maintained as a grass area or otherwise in a dust-free manner.
- (6) Seasonal parking lots shall be designed so as to permit vehicles exiting the lot to enter the street right-of-way in a forward motion. The seasonal parking lot, where applicable, shall utilize an existing entrance or exit, except that no additional traffic shall be directed onto residential streets. Where no access exists, a parking lot plan showing an

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acceptable temporary access point(s) may be approved by the director.

- (7) If the seasonal parking lot is to be used at night, adequate lighting shall be provided for the driveway's ingress and egress points. The lighting shall be directed to eliminate glare on any other use.
- (8) The seasonal parking lot shall be secured in a manner which will not permit ingress and egress except during the designated hours of operation.
- (9) The seasonal parking lot shall not adjoin or be less than ten feet from residential uses or residentially zoned property.
- (10) A parking attendant shall be required during the posted hours of operation of the seasonal parking lot.
- (11) The seasonal parking lot shall only be used for the parking of operable motor vehicles, with no overnight parking or camping.
- (12) The maximum hours of operation shall be from 7:00 A.M. until 10:00 P.M., unless extended by the director in writing.
- (13) The parking spaces created through the approval of seasonal parking lots shall not be used for calculating off-street parking requirements as set out in § 34-2020.
- (14) At intersections of parking lot entrances or exits with a street right-of-way or easement, no obstruction shall be planted or erected which materially obstructs the driver's view of approaching traffic or pedestrians (see § 34-3131).
- (15) Seasonal parking lot signs must comply with requirements for commercial development signs in § 30-151, except that the signs may remain in use for the duration of the temporary use permit. These signs must be created and displayed in a professional manner. The town manager may require the removal of any signs that do not comply with these standards, or which remain visible after the expiration of the temporary use permit.
- (16) The town manager may require visual screening between a seasonal parking lot and any residentially zoned or used property. If additional screening is requested by the town manager, it must be installed within 30 days of written notice to the

property owner or parking lot operator or the temporary use permit will be null and void.

(c) A seasonal parking lot approved for a single period of up to 3 years must comply with subsection 34-2022(b) and with the following additional regulations:

- (1) Compliance with all applicable regulations must be demonstrated on a paving, grading, and drainage plan acceptable to the director.
- (2) Where a seasonal parking lot abuts residentially zoned or used property, that portion of the parking lot shall be buffered by a continuous visual screen with a minimum opacity of 50 percent and a minimum height of three feet. This screen may contain a combination of walls, fences, railings, and shrubs. Walls, fences, and railings may not exceed the maximum heights established by this code. The visual screen may be located as close as one foot from the right-of-way or street easement line but not closer than five feet from the edge of a travel lane. The town manager may require more extensive screening if the height, character, and location of the screen does not or may not adequately protect the abutting property from excessive impacts from the seasonal parking lot. Additional screening as requested by the town manager must be installed within 30 days of written notice to the property owner or parking lot operator, or the temporary use permit will be null and void.
- (3) Where a seasonal parking lot abuts a street, that portion of the parking lot shall be buffered by a continuous visual screen with a minimum opacity of 25 percent and a minimum height of three feet. This screen may contain a combination of walls, fences, railings, and shrubs. The visual screen may be located up to one foot from the right-of-way or street easement line.
- (4) Seasonal parking lot signs must comply with requirements for individual business establishment signs in § 30-153. These signs must be created and displayed in a professional manner. The town manager may require the removal of any signs that do not comply with these standards, or which

remain visible after the expiration of the temporary use permit.

(d) Seasonal parking lots remaining in use for longer than three years are considered to be permanent shared parking lots and must be constructed to this division's standards for single-purpose parking lots, including landscape buffering. Permanent shared parking lots must be approved by special exception (see § 34-2015(2)b.).

**Secs. 34-2023--34-2030. Reserved.**

## DIVISION 26-A. PERFORMANCE STANDARDS

### **Sec. 34-2031. Performance standards, environmental quality.**

All uses and activities permitted by right, special exception, or temporary use permit in any zoning district, including planned development districts, shall be constructed, maintained, and operated so as to:

- (1) comply with all local, state, and federal air, and noise, and water pollution standards, and
- (2) not adversely impact water quality.

### **Sec. 34-2032. Performance standards, creation of nuisance.**

All uses and activities permitted by right, special exception, or temporary use permit in any zoning district, including planned development districts, shall be constructed, maintained, and operated so as to:

- (1) not be injurious or offensive and thereby constitute a nuisance to the owners and occupants of adjacent premises, nearby residents, or to the community, by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic or noxious waste materials, odors, fire or explosive hazard, light pollution, or glare; and
- (2) not cause light from a point source of light to be directed, reflected, or refracted beyond the boundary of the parcel or lot, onto adjacent or nearby residentially zoned or used property or onto any public right-of-way, and thereby constitute a nuisance to owners or occupants

of adjacent premises, nearby residents, or to the community; and

- (3) ensure all point sources of light and all other devices for producing artificial light are shielded, filtered, or directed in such a manner as to not cause light trespass; minimum standards are provided in division 20 of this article.

**Secs. 34-2033--34-2050. Reserved.**

## DIVISION 27. PLACES OF WORSHIP AND RELIGIOUS FACILITIES

### **Sec. 34-2051. Property development regulations.**

Places of worship and religious facilities shall adhere to the dimensional regulations of their zoning district (see Table 34-3).

### **Sec. 34-2052. Parking.**

(a) *Places of worship.* Parking for places of worship shall be provided at the ratio of one parking space for each three seats within the sanctuary or main assembly hall, whichever is greater. Where benches, pews or other similar seating arrangements are used, each 24 lineal inches shall be counted as one seat.

(b) *Religious facilities.* Parking for religious facilities shall be the same as for places of worship, with additional parking for ancillary facilities as required in division 26 of this article; provided that, where the ancillary facilities will not be used at the same time, parking shall be based upon the peak anticipated attendance at any one time, for all facilities.

(c) *Parking on grass.* Up to 75 percent of the parking spaces required for the sanctuary or main assembly hall of a place of worship may be provided as parking on grass, provided the regulations set forth in the relevant sections of division 26 of this article, are met.

### **Sec. 34-2053. Expansion of existing place of worship.**

Expansion of existing places of worship and religious facilities, lawfully existing as of August 1,



1986, by right or by special exception, is hereby declared a legal use. Additions, renovations, or other expansion of the main place of assembly may be permitted upon application for and approval of a building permit in accordance with all applicable town regulations.

**Sec. 34-2054. Living quarters.**

Dwelling units and living units that provide living quarters within a religious facility must comply with the density restrictions found in § 34-632.

**Secs. 34-2055--34-2080. Reserved.**

**DIVISION 28. RESERVED**

**Secs. 34-2081--34-2110. Reserved.**

**DIVISION 29. PRIVATE CLUBS  
AND MEMBERSHIP ORGANIZATIONS**

**Sec. 34-2111. Applicability of regulations to membership organizations.**

The listing in this code of membership organizations is not meant to limit or abridge the rights of assembly. Such organizations are not prohibited from meeting in various traditional and appropriate places. For example, a service club's weekly meeting at a restaurant in a district not otherwise allowing a membership organization shall not constitute a zoning violation. However, where such an organization is the principal user of real property for meetings, entertainment, and food and beverage service, such a meeting place, hall, or clubhouse shall be permitted only where this use is explicitly enumerated.

**Secs. 34-2112--34-2140. Reserved.**

**DIVISION 30.  
RECREATION FACILITIES**

**Sec. 34-2141. Applicability**

(a) The regulations set forth in this division for recreation facilities are in addition to any other applicable regulations. In the case of conflict, the most restrictive regulations shall apply.

(b) This chapter defines five types of recreation facilities (see § 34-2):

- (1) *Recreation facilities, commercial*, which are permitted by special exception in certain zoning districts.
- (2) *Recreation facilities, personal*, which are considered to be residential accessory uses.
- (3) *Recreation facilities, private ON-SITE*, which are permitted by right in certain zoning districts.
- (4) *Recreation facilities, private OFF-SITE*, which are permitted by special exception in certain zoning districts.
- (5) *Recreation facilities, public*, which are permitted by right in certain zoning districts.

(c) This chapter also defines *Park, neighborhood* and *Park, community or regional* (see § 34-2), both of which are permitted by right in certain zoning districts.

**Sec. 34-2142. Minimum lot area and setbacks.**

(a) All recreation facilities, whether a principal use or accessory use, shall be located on property meeting the minimum lot size and dimensions of the zoning district in which located as well as any additional area, width, or depth required to permit full compliance with all setbacks, ground cover, open space, buffering, drainage, and parking requirements as set forth in this chapter or ch. 10, whichever is most applicable.

(b) Minimum setbacks for uses subject to this division are as set forth in the property development regulations of the zoning district in which located.

(c) Additional setback requirements for specific uses are as follows:

- (1) *Recreation facilities, commercial*.  
Amusement devices, water slides, miniature golf, and other commercial recreation

facilities shall be located not less than 50 feet or a distance equal to the height of the structure or device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100 feet from any adjacent property with residential zoning or any existing residential use.

- (2) *Recreation halls.* Recreation halls and ancillary facilities and membership organizations shall be located at least 40 feet from any residential dwelling and situated in a manner so as to encourage pedestrian and bicycle traffic.
- (3) *Other facilities.* Other facilities are specifically regulated elsewhere in this code, such as swimming pools and tennis courts in division 2 of this article.

#### **Sec. 34-2143. Accessory uses.**

(a) Accessory uses, buildings, or structures for recreation facilities which are customarily incidental to the principal use may be permitted. Such uses include but are not limited to restroom facilities, maintenance sheds, refreshment stands (with no alcoholic beverages unless approved in accordance with division 5 of this article), pro shops (where applicable), and administrative offices.

(b) Food and beverage service is permitted in any recreation hall; provided, however, no alcoholic beverages shall be distributed or consumed on the premises except in compliance with division 5 of this article.

#### **Sec. 34-2144. Lighting.**

Artificial lighting used to illuminate the premises of recreation facilities shall be directed away from adjacent properties and streets.

#### **Sec. 34-2145. Sound systems.**

Sound systems shall meet the requirements of the town's noise control ordinance, Ordinance No. 96-24 as may be amended from time to time.

#### **Secs. 34-2146--34-2350. Reserved.**

### **DIVISION 31. RECREATIONAL VEHICLES**

#### **Sec. 34-2351. Recreational vehicle subdivisions.**

(a) New or expanded recreational vehicle subdivisions are not allowed in the Town of Fort Myers Beach.

(b) A recreational vehicle cannot be substantially improved or placed on any lot in any subdivision except:

- (1) for parking of a single recreational vehicle for purposes of dead storage, or
- (2) on a temporary basis in accordance with § 34-3046.

#### **Sec. 34-2352. Recreational vehicle parks.**

(a) New or expanded recreational vehicle parks are not allowed in the Town of Fort Myers Beach.

(b) A recreational vehicle cannot be substantially improved or placed in any existing recreational vehicle park except in the VILLAGE zoning district in accordance with the regulations set forth in subdivision III of division 5 of article III of this chapter, and in accordance with the requirements of § 6-472(3).

#### **Secs. 34-2353--34-2380. Reserved.**

## DIVISION 32. SCHOOLS

### **Sec. 34-2381. All schools.**

(a) All schools, whether run by government, religious, or non-profit agencies or operated as businesses, may be located only in the following categories on the future land use map in accordance with Policy 4-B-14 of the comprehensive plan:

- (1) Mixed Residential,
- (2) Boulevard,
- (3) Pedestrian Commercial, or
- (4) Recreation (but never seaward of the 1978 coastal construction control line).

(b) The maximum intensity of new or expanded schools shall not exceed a floor area ratio of 0.50 (see § 34-633).

### **Sec. 34-2382. Noncommercial schools.**

(a) *Public schools.* All schools constructed by the district school board on land owned by the district school board are permitted by right in any zoning district, provided the site complies with § 34-2381(a).

(b) *Other noncommercial schools.* Other noncommercial schools are permitted by right in accordance with the district use regulations in, provided the site complies with § 34-2381(a).

### **Sec. 34-2383. Schools operated as businesses.**

Schools that are operated as private businesses are permitted wherever this code allows *Offices, general and medical* (see division 2 of article III of this chapter), provided the site complies with § 34-2381(a).

### **Secs. 34-2384--34-2390 Reserved.**

## Short-Term Rentals

### DIVISION 32-A. SHORT-TERM RENTALS

#### Sec. 34-2391. Restrictions on weekly rentals in certain zoning districts.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on weekly rentals does not apply to:
  - a. Any land between Estero Boulevard and the Gulf of Mexico.
  - b. Any land directly adjoining the bay side of Estero Boulevard.
  - c. Any dwelling unit that is recognized by the Town of Fort Myers Beach as having had pre-existing weekly rentals as of January 1, 2003, when registered in accordance with § 34-2392.
- (2) Dwellings units on property that qualifies for any of these exceptions may be rented to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

#### Sec. 34-2392. Registry of certain pre-existing weekly rentals.

(a) Dwelling units in certain zoning districts are not permitted to be rented to more than a single family during any one-month period due to restrictions found in Tables 34-1 and 34-2. The owner of any such dwelling unit that was being lawfully used for weekly rentals during the 12-month period prior to January 1, 2003, may apply for registration under this section to continue weekly rentals.

- (1) Upon verification by the town and placement of such dwelling units on a registry of pre-existing weekly rentals, the owners of registered dwelling units may continue to rent those units to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

- (2) This right shall run with the land and shall not be affected by the transfer of the property to subsequent owners.
- (3) If weekly rentals of a particular dwelling unit are terminated for any reason for any 12-month period, weekly rentals may not thereafter be reinstated in that dwelling unit.
- (4) Dwelling units on land that is not affected by the restrictions in Tables 34-1 and 34-2 limiting rentals to no more than a single family during any one-month period should not be submitted for registration. Such units will not be placed on the registry of pre-existing weekly rentals.

(b) Applications for annual registration of lawful pre-existing weekly rental units shall be submitted to the town manager by June 1, 2003. Each application must include:

- (1) Name of the applicant, if different than the property owner, and the applicant’s mailing address and telephone number.
- (2) Name of current property owner (and previous owner, if property has been transferred since January 1, 2003).
- (3) Street address and STRAP number of parcel.
- (4) Number of rental dwelling units at that address that are part of the application.
- (5) Evidence of lawful pre-existing weekly rental use of each dwelling unit in the application as of January 1, 2003. Such evidence may include:
  - a. Evidence that each dwelling unit was licensed by the state of Florida as a “resort dwelling” or as a public lodging establishment, in accordance with F.S. § 509.241.
  - b. Evidence of regular payment of Lee County’s 3% tourist development tax on rentals of each dwelling unit.
  - c. Evidence of regular payment of Florida’s 6% sales tax on rentals of each dwelling unit.
  - d. Signed rental contracts or income tax returns.
- (6) A local telephone number with a contact that is available 24 hours a day.
- (7) Payment of an application fee established by the town.

## Short-Term Rentals

- (8) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.

(c) The town manager will evaluate each application and notify applicants in writing within 60 days whether each dwelling unit is being registered with the town as a pre-existing weekly rental unit or whether the dwelling unit does not qualify for such registration. Reasons for disqualification will be stated in the written notice. All applications and written responses are public records and will be available for inspection at town hall.

(d) Decisions by the town manager pursuant to this subsection may be appealed to the town council by the applicant or adjoining property owner in accordance with § 34-86. In addition to the criteria in this subsection, the town council may consider evidence submitted by the appellant alleging equitable considerations for registration of a dwelling unit despite noncompliance with a particular requirement of this division. The town council shall consider the advice of the town attorney when evaluating allegations for equitable relief.

(e) Registrants must supplement their application within 30 days if they change the local telephone number for the contact that must be available 24 hours a day.

(f) Beginning on June 1, 2004 and every year thereafter, renewal applications are due for all registered weekly rental units.

- (1) The renewal application shall be the same as the original application except that evidence of subsections (b)(5)a, (b)(5)b, and (b)(5)c shall be mandatory for every renewal period.
- (2) Registrants who continue weekly rentals after failing to complete a renewal application and obtaining registration for another year will be in violation of this code.

### **Sec. 34-2393. Code of conduct for short-term rentals.**

(a) The town hereby establishes a code of conduct that applies to operators and guests of all short-term rental units, including those on the registry of pre-existing weekly rentals and also those rentals between one week and one month that are permitted by right in accordance with Table 34-2. The code of conduct is as follows:

- (1) **Maximum Occupancy:** Occupancy of each short-term rental unit must be consistent with the definition of “family” that is found in § 34-2 of this code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.
- (2) **Refuse Collection:** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.
- (3) **Quiet Hours:** Between the hours of 10:00 P.M. and 7:00 A.M., all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
- (4) **Mandatory Evacuations:** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

## Short-Term Rentals

(b) Operators are required to provide guests with the town's code of conduct for short-term rentals.

- (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
- (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
- (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

(c) Operators must provide the town with a current local telephone number of a contact for each short-term rental unit. This telephone number must be answered 24 hours a day to respond to complaints. These telephone numbers are public records and will be available at town hall during regular business hours.

### **Sec. 34-2394. Enforcement and penalties.**

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

(c) For properties on the registry of pre-existing weekly rentals (see § 34-2392), the following additional requirements shall apply:

- (1) Violations of F.S. ch. 509 shall also be considered to be violations of this division as follows:
  - a. Failure to maintain licensure or any other provisions of ch. 509.
  - b. Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.
- (2) Repeated violations of this division on a registered property shall lead to cumulative penalties. These penalties shall accrue as follows whenever a violation results in a fine

being imposed on or paid or whenever a finding of violation is made by a judge or code enforcement special magistrate:

- a. First violation: \$250 fine.
- b. Second violation: \$500 fine.
- c. Third violation: six-month suspension of registration under § 34-2392.
- d. Fourth violation: two-year suspension of registration under § 34-2392.

After any period of three years during which there were no fines imposed or paid and no formal findings of violations of this division, the next violation shall be deemed to be the first violation for purposes of this section.

### **Secs. 34-2395–34-2410. Reserved.**

## DIVISION 33. SIGNS

### Sec. 34-2411. Location and construction.

All signs shall be located, erected, and constructed in accordance with ch. 30, except where this chapter provides more explicit regulations for a specific use.

### Secs. 34-2412--34-2440. Reserved.

## DIVISION 34. SPECIAL EVENTS

### Sec. 34-2441. Special events defined.

A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society.

### Sec. 34-2442. Permits for special events.

(a) The Town of Fort Myers has established a permitting process for special events through Ordinances 98-01 and 00-16 and any future amendments.

(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.

(c) Special events on the beach shall also comply with § 14-11 of this code.

### Secs. 34-2443--34-2470. Reserved.

## DIVISION 35. RESERVED

### Secs. 34-2471--34-3000. Reserved.

## DIVISION 36. STORAGE FACILITIES AND OUTDOOR DISPLAY OF MERCHANDISE

### Sec. 34-3001. Applicability of division.

(a) Except as provided in this section, the regulations set forth in this division shall apply to all outdoor display of merchandise which is offered for sale or rent, and to all storage facilities as defined in this division.

(b) The provisions of the division do not apply to garage or yard sales by residents of dwelling units on their own property in accordance with this code (see § 34-2) or to the mooring or docking of watercraft.

### Sec. 34-3002. Mobile vendors and transient merchants.

(a) Mobile vendors includes a person who sells food or other product or service to the public from a mobile dispensing vehicle which is self-propelled or otherwise readily moveable from place to place either operated from a base facility or not operated from a base facility.

(b) No mobile vendor shall be permitted to make sales from a vehicle while stopped on the right-of-way or other public property within the limits of the Town of Fort Myers Beach, except in accordance with § 34-3004.

(c) Mobile vendors and transient merchants must comply with all provisions of Ordinance 96-14, the Fort Myers Beach Transient Merchant Regulation Ordinance, and with all subsequent amendments.

### Sec. 34-3003. Reserved.

### Sec. 34-3004. Outdoor display of merchandise for sale or rent.

(a) Outdoor sales includes all sales or display of merchandise, food, and beverages between the outer wall of stores and public rights-of-way or, where permitted, on public rights-of-way, but does not include merchandise visible through windows or sold to customers using pass-through windows. Merchandise sold or displayed outdoors must not be placed closer than 3 feet to any sidewalk or bike path or to any right-of-way.

(b) This code allow outdoor display and sales of merchandise only as follows:

- (1) In farmers' markets or other special events authorized by the town;
- (2) Beach furniture (in accordance with § 14-5);
- (3) Bicycles, motorbikes, and motorcycles (by dealers or rental agencies in zoning districts where they are permitted);
- (4) Boats (by boat dealers in zoning districts where they are permitted);
- (5) Personal watercraft (in accordance with § 27-49);
- (6) Lawn and garden ornaments (by retail stores in zoning districts where they are permitted), provided the merchandise collectively does not exceed a height of 4 feet and a width (parallel to the right-of-way) of 8 feet;
- (7) On private property in the DOWNTOWN zoning district (in accordance with § 34-678(e)); and
- (8) On public property in parts of the DOWNTOWN zoning district (in accordance with § 34-678(f)).

(c) Artificial lighting used to illuminate premises subject to this division shall be directed away from adjacent properties and streets, shining only on the subject site.

(d) The outdoor display and sales of merchandise, food, and beverages is prohibited within the town limits, except in accordance with this section.

#### **Sec. 34-3005. Storage facilities.**

##### **(a) *Indoor storage.***

- (1) *Permitted districts.* Except for warehouses and mini-warehouses, indoor storage is permitted within any zoning district when accessory to the permitted principal use of the property. Warehouses and mini-warehouses are permitted only in zoning districts for which it is specifically stated that such uses are permitted.
- (2) *Setbacks.* All buildings used for indoor storage which are located on the same lot as the principal building shall comply with the setback requirements for accessory buildings. Buildings used for indoor storage which are not on the same lot as the principal building, but are on the same premises, shall meet the

setbacks set forth in the district regulations for principal buildings.

##### **(b) *Open storage.***

- (1) *Fencing and screening.* All commercial outdoor storage shall be shielded behind a continuous visual screening at least eight feet in height when visible from a residential use or residential zoning district, and six feet in height when visible from any street right-of-way or street easement.
- (2) *Storage area.* Storage areas do not need to be paved. Grass or other ground cover may be used provided it is kept in a sightly and dustfree manner.

(c) ***Use of vehicles, truck trailers, or shipping containers for storage.*** Vehicles, truck trailers, shipping containers, and other similar structures may not be used to store goods, produce, or other commodities except in conjunction with an active building permit or development order (see § 34-3044) or unless approved on a temporary basis in accordance with § 34-3041.

##### **(d) *Bulk storage of flammable liquids.***

- (1) *Firewalls or dikes required.* Whenever aboveground tanks for storage of gasoline, gas, oil, or other flammable liquids are located on any land where such use is permitted, such tanks shall be surrounded by an unpierced firewall or dike of such height and dimensions as to contain the maximum capacity of the tanks. All storage tanks and adjacent structures shall meet the requirements of the Board of Fire Underwriters.
- (2) *Exceptions.* Storage tanks containing liquified petroleum, commonly known as bottled gas, are specifically excluded from the provisions of this subsection.

#### **Secs. 34-3006--34-3020. Reserved.**



## Temporary Uses

### DIVISION 37. SUBORDINATE AND TEMPORARY USES

#### *Subdivision I. In General*

#### **Sec. 34-3021. Subordinate uses.**

(a) **Purpose.** The purpose of this section is to provide for certain commercial uses provided such uses are clearly subordinate to permitted principal uses of *Cultural facilities; Hotels/motels; Multiple-family buildings; Park, community or regional; or Resorts.*

(b) **Permitted uses; restrictions.**

- (1) The uses listed in subsection (b)(2) of this section shall be permitted when clearly subordinate to the principal use, subject to the following requirements:
  - a. The subordinate use shall be totally within the building(s) housing the principal use;
  - b. The subordinate use shall not occupy more than ten percent of the total floor area of the principal use; and
  - c. Public access to the subordinate use shall not be evident from any abutting street.
- (2) Uses permitted are:
  - a. *Personal services.*
  - b. *Retail store, small.*
  - c. *Restaurant.*

#### **Secs. 34-3022--34-3040. Reserved.**

#### *Subdivision II. Temporary Uses*

#### **Sec. 34-3041. Generally.**

(a) **Purpose.** The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.

(b) **Permit required.** No temporary use shall be established until a temporary use permit has been

obtained from the director in accordance with the requirements of § 34-3050. Some temporary uses may qualify as special events that are regulated by Ordinance 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code.

(c) **Lighting.** No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) **Time limit.**

- (1) All uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:
  - a. Except as provided for seasonal parking lots in §§ 34-2022 and for other uses where specifically provided in §§ 34-3043 through 34-3048, the director may not authorize a temporary use for more than 30 days; and
  - b. If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.
- (2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use for a period of six months from the date of expiration of the previous temporary use permit.

(e) **Hours of operation.** Hours of operation shall be confined to those specified in the permit.

(f) **Cleanup.** The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

(g) **Traffic control.** Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant.

## Temporary Uses

(h) **Damage to public right-of-way.** A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required to ensure the repair of any damage resulting to any public right-of-way as a result of the event.

### **Sec. 34-3042. Carnivals, fairs, circuses, and amusement devices.**

(a) **Location of amusement devices and other structures.** Refer to § 34-2142(a) and (b) for setback requirements.

(b) **Off-street parking.** Refer to § 34-2020(d)(3)g. for off-street parking requirements.

(c) **Hours of operation.** The hours of operation shall be limited to 10:00 A.M. to 10:00 P.M., unless otherwise extended by the director in writing.

(d) **Special event permit.** In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may be subject to the provisions of the town's special events ordinance, No. 98-01 as amended (see also division 34 of this article).

### **Sec. 34-3043. Christmas tree sales.**

(a) Christmas tree sales may be permitted in any commercial district, provided that:

- (1) No parking lot required for another use shall be used for display of trees; and
- (2) Temporary off-street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.

(b) The maximum length of time for display and open-lot sales shall be 45 days.

### **Sec. 34-3044. Temporary contractor's office and equipment storage shed.**

A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office

and construction shed shall be removed within 30 days of the date of final inspection for the project.

### **Sec. 34-3045. Alcoholic beverages.**

Temporary one-day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d)

### **Sec. 34-3046. Temporary use of mobile home.**

(a) **Rehabilitation or construction of residence following disaster.**

- (1) When fire or disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.
- (2) The maximum duration of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is 6 months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.

(b) **Rehabilitation or construction of damaged business or commercial uses following disaster.**

- (1) Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.
- (2) The maximum duration of the temporary use is 9 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is 6 months.

## Temporary Uses

The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.

(c) ***Conditions for use.***

- (1) Required water and sanitary facilities must be provided.
- (2) The mobile home or recreational vehicle shall be removed from the property within ten days after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.

**Sec. 34-3047. Temporary telephone distribution equipment.**

Telephone distribution equipment may be granted a temporary use permit during planning and construction of permanent facilities, provided that:

- (1) The equipment is less than six feet in height and 300 cubic feet in volume; and
- (2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company. Application for an extension shall be made at least 15 days prior to expiration of the original permit.

**Sec. 34-3048. Ancillary temporary uses in parking lots.**

(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050):

- (1) Seasonal promotions.
- (2) Sidewalk or parking lot sales.
- (3) Fairs and carnivals (see § 34-3042).
- (4) Tent sales.
- (5) Flea markets by nonprofit organizations.
- (6) Welcome stations in accordance with § 34-3051.

(b) In approving a temporary use permit, the director shall require that the area of the lot to be

used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.

**Sec. 34-3049. Seasonal parking lots.**

Seasonal parking lots may be permitted in commercial zoning districts, provided that they are in compliance with § 34-2022.

**Sec. 34-3050. Temporary use permits.**

(a) ***Applicability.*** Any person desiring to conduct any of the temporary uses described in this subdivision shall be required to submit an application for a temporary use permit.

(b) ***Initiation of application.*** An application for a temporary use permit may be initiated by the town or any individual authorized in accordance with § 34-201(a).

(c) ***Submission of application.***

- (1) No application shall be accepted unless it is presented on the official forms provided by the director.
- (2) Before an application may be accepted, it must fully comply with all information requirements enumerated in the application form as well as the requirements set forth in subsection (d) of this section.
- (3) The applicant shall ensure that an application is accurate and complete. Any additional expenses necessitated because of any inaccurate or incomplete information submitted shall be borne by the applicant.

(d) ***Additional required information.*** In addition to the application information, the applicant shall submit satisfactory evidence of the following:

- (1) Evidence shall be submitted that adequate sanitary facilities meeting the approval of the county health department are provided.
- (2) Evidence shall be submitted that sounds emanating from the temporary use shall not adversely affect any surrounding property.
- (3) Evidence shall be submitted that all requirements as to providing sufficient parking and loading space are assured.

## Temporary Uses

- (4) When deemed necessary, a bond shall be posted, in addition to an agreement with a responsible person sufficient to guarantee that the ground area used during the conduct of the activity is restored to a condition acceptable to the director.
- (5) All applications for temporary use permits, excluding those for the temporary use of mobile homes following a natural disaster (see § 34-3046), shall provide public liability and property damage insurance. This requirement may be waived by the town council.
- (6) Evidence shall be submitted that, where applicable, the applicant for a proposed use has complied with town ordinances pertaining to special events, including Ordinances No. 98-1, 00-16, and any later amendments (see also division 34 of this article).
- (7) Evidence shall be submitted that the law enforcement and fire agencies who will be coordinating traffic control or emergency services have been advised of the plans for a temporary use and that they are satisfied with all aspects under their jurisdiction.

(e) **Inspection following expiration of permit; refund of bonds.** Upon expiration of the temporary use permit, the director shall inspect the premises to ensure that the grounds have been cleared of all signs and debris resulting from the temporary use and shall inspect the public right-of-way for damages caused by the temporary use. Within 45 days after a satisfactory inspection report is filed, the director shall process a refund of the bonds. An unsatisfactory inspection report shall be sufficient grounds for the town to retain all or part of the bonds posted to cover the costs which the town would incur for cleanup or repairs.

### Sec. 34-3051. Temporary welcome stations.

(a) **Defined.** Temporary welcome stations are located in a mobile vehicle, either self-propelled or otherwise readily moveable from place to place, and are operated by a non-profit organization. Welcome stations are intended to promote community businesses and organizations and are therefore limited to providing information without the sale or

distribution of any product or service. Welcome stations may not collect food or clothing or accept other donations.

#### (b) **Type of approval.**

##### (1) **Administrative**

- a. **Length of Permit.** A temporary use permit may be issued for a maximum of 90 days or less, and may not be renewed or reissued to the same applicant or on the same premises for a period of 6 months from the date of expiration of the previous permit. An organization may request an annual permit to operate no more than 6 months during any 1-year period. The 6 months may be consecutive or divided into 2-, 3-, or 4-month periods. No more than 2 welcome stations may be operating at one time.
- b. **Location.** Temporary welcome stations may be located in existing parking lots on property zoned commercial. The welcome station must be ancillary to the principal use and the required number of parking spaces for the principal use must be maintained.
- c. **Permit requirements.** In addition to the requirements found in § 34-3050, organizations must provide a photograph of the welcome station and its dimensions, the dates and corresponding locations where the welcome station will be operating, daily hours of operation for a minimum of 5 days per week, and a site plan of the parking lot, drawn to scale with the location of existing parking spaces and the welcome station. Each welcome station is permitted one 24-square-foot identification sign, mounted on the welcome station, which should be shown in the required photograph.
- d. **Review of permit.** The director will approve or deny the application, in part or whole, based on the welcome station's consistency with the standards established for outdoor display of merchandise and compatibility with surrounding uses. The welcome station must be maintained in good condition, consistent with the photograph submitted with the application.

## Temporary Uses

Failure to comply with the minimum hours of operation provided may result in revocation of the temporary use permit.

- e. *Emergency Evacuation.* Mobile welcome stations must be removed from the county or placed within an approved off-site storage area within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center.

(2) **Special Exception**

- a. *Length of Approval.* Temporary welcome stations may be approved for longer periods of time by receiving a special exception. A special exception approval may include a specific length of time the approval is in effect.
- b. *Application requirements.* Applications must comply with article II, division 4 of this chapter, including § 34-203(d) special exceptions. The director may waive § 34-201(b)(1) which requires all properties to be abutting or have a rational continuity. Non-abutting properties must meet the location requirements established in this section. If the request involves multiple parcels, applications must include a surrounding property owners list and map for all property owners within 300 feet, including individual condominium owners.
- c. *Location.* The request may include multiple, non-abutting properties. Welcome stations may be approved on property zoned commercial, in existing commercial parking lots, or in the parking lot of an existing principal use. Where the station is an ancillary use, the required number of parking spaces for the principal use must be maintained.
- d. *Standards for approval.* In addition to the considerations for special exceptions found in § 34-88, requests must meet the following performance and locational standards:
  - 1. Welcome stations must remain at an approved location a minimum of 30 days before moving to a different approved location.

- 2. Welcome stations must operate a minimum of 5 days per week, 4 hours per day.
- 3. Each welcome station is permitted one 24-square-foot identification sign, mounted on the welcome center.
- 4. Welcome stations must be able to be removed from the county or placed within an approved off-site storage area within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center.

**Secs. 34-3052--34-3054. Reserved.**

### *Subdivision III. Special Events*

**Sec. 34-3055. Special events.**

(a) A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.

(b) See division 34 of this chapter for a summary of permitting rules for special events.

**Secs. 34-3056--34-3060. Reserved.**

## DIVISION 38. TALL STRUCTURES

### **Sec. 34-3061. Permit for tall structures.**

(a) Any construction or alteration of a greater height than 125 feet above mean sea level shall require a tall structures permit. An applicant is required to obtain a tall structures permit prior to the issuance of any further development orders or permits.

(b) Applications for a tall structures permit shall include the height and location of derricks, draglines, cranes, and other boom-equipped machinery, if such machinery is to be used during construction.

- (1) Applicants intending to use derricks, draglines, cranes, and other boom-equipped machinery for such construction, reconstruction, or alteration as is consistent with the provisions of this division shall, when the machine operating height exceeds the height limitations imposed by this division, require a tall structures permit.
- (2) Upon obtaining this permit through the procedures outlined in this section, the applicant shall mark, or mark and light, the machine to reflect conformity with the Federal Aviation Administration's or the county port authority's standards for marking and lighting obstructions, whichever is more restrictive, and shall be required in such cases to inform the county port authority, through this tall structures permit process, of the location, height, and time of operation for such construction equipment use prior to the issuance of any construction permit to the applicant.

(c) The permitting procedures for a tall structures permit are outlined as follows. If a tall structures permit application is deemed necessary by the director, the following procedures shall apply:

- (1) The director shall give a written notice to the applicant that a tall structures permit is required and that no further permits or development orders can be issued until a tall structures permit is obtained.
- (2) The applicant shall then submit a completed tall structures permit application to the Lee County Port Authority, 16000 Chamberlin Parkway, Ft. Myers, Florida 33913. The

county port authority shall review the application, and the following procedures will apply:

- a. If the county port authority determines that the proposed construction or alteration represented in the application does not violate the provisions of Federal Aviation Regulations, part 77, or the provisions of this division or any other application of federal or state rules and regulations or does not adversely affect the airspace surrounding any county airport, the port authority shall indicate such determination on the tall structures permit application. The signed tall structures permit application will then be returned to the applicant. The applicant shall present the tall structures permit application to the administrative director in order that a tall structures permit may be issued. If the signed tall structures permit application is accompanied with stipulations of compliance as determined by the county port authority, it is the responsibility of the administrative director to ensure that these stipulations are adequately addressed prior to the issuance of a tall structures permit.
- b. If the county port authority determines that the proposed construction or alteration violates the notification criteria of Federal Aviation Regulations, part 77, or otherwise violates any provisions of this division or any other applicable federal or state rules or regulations, the county port authority will notify the applicant in writing that the proposed construction or alteration may adversely affect the airspace surrounding county airports and require that a notice of proposed construction or alteration be filed with the Federal Aviation Administration for review through the submittal of Federal Aviation Administration Form 7460-1 as required by Federal Aviation Regulations, part 77. The county port authority shall suspend the tall structures permit application process until Federal Aviation Administration findings of aeronautical effect are received and reviewed.
- c. It is the responsibility of the applicant to forward the Federal Aviation Administration's findings of aeronautical effect, along with a copy of the completed original Federal Aviation Administration

Form 7460-1, to the county port authority in order to continue the tall structures permit process.

- d. The tall structures permit application shall not be issued if the proposed construction or alteration is found to violate the provisions of this division or any other applicable federal or state rules or regulations. No tall structures permit will be issued if all Federal Aviation Administration and county port authority comments are not addressed to the satisfaction of the county port authority. The applicant shall be forwarded a written notice if the tall structures permit is denied, from the county port authority. This written notice shall specify the reason for objections and suggestions for compliance under this division and all other applicable federal or state rules and regulations.
- e. After reviewing the Federal Aviation Administration's comments pertaining to the Federal Aviation Administration Form 7460-1, if the county port authority determines that the proposed construction or alteration does not adversely affect any other requirements pertaining to county airports, the port authority shall return to the applicant the signed tall structures permit application. The applicant shall present a copy of the tall structures permit application, along with all port authority comments and stipulations, to the director in order that a tall structures permit may be issued. If the signed tall structures permit application is accompanied with stipulations of compliance, it is the responsibility of the director to ensure that these stipulations are adequately addressed prior to the issuance of a tall structures permit.

(d) If the director determines that all procedures and application approvals are in compliance with the provisions outlined in this section, then a tall structures permit will be issued to the applicant.

- (1) No tall structures permit shall be issued prior to obtaining a determination of acceptability and compliance from the county port authority.
- (2) Temporary or conditional tall structures permits pending completion of the Federal

Aviation Administration's or the county port authority's review shall not be issued.

**Secs. 34-3062--34-3065. Reserved.**

## DIVISION 38-A. TATTOO STUDIOS AND BODY-PIERCING SALONS

### **Sec. 34-3066. Purpose of division.**

This division regulates the placement of tattoo studios and body-piercing salons. The purpose is to avoid the proliferation or concentration of such establishments in the Town of Fort Myers Beach.

### **Sec. 34-3067. Definitions.**

*Body-piercing* means for commercial purposes the act of penetrating the skin to make, generally permanent in nature, a hole, mark, or scar. "Body piercing" does not include the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

*Body-piercing salon* means any temporary or permanent place, structure, or business that is licensed under the provisions of F.S. § 381.0075 to perform body piercing.

*Establishment* means a body-piercing salon or tattoo studio as defined in this division, but does not include the practice of any state-licensed physician or osteopath who may attempt to cover up existing tattoos.

*Tattooing* means the placement of indelible pigment, inks, or scarification beneath the skin by use of needles for the purpose of adornment or art. "Tattooing" includes the practice of permanent makeup and micropigmentation.

*Tattooing* means the placement of indelible pigment, inks, or scarification beneath the skin by use of needles for the purpose of adornment or art. For the purposes of this division, "tattooing" does not include the practice of permanent makeup and micropigmentation when such procedures are performed as incidental services in a medical office or in a personal services establishment such as a hair or nail salon.

*Tattoo studio* means any temporary or permanent place, structure, or business used for the practice of tattooing.

**Sec. 34-3068. Minimum spacing required for new or relocated establishments.**

No new or relocated tattoo studio or body-piercing salon shall be placed within 2,000 feet of any lawfully existing establishment as defined in § 34-3067. This distance shall be measured from any public entrance or exit of the new or relocated establishment in a straight line to the nearest property line of the existing establishment.

**Sec. 34-3069. Destruction by natural disaster.**

If a building containing a lawfully existing establishment as defined in § 34-3067 is damaged or destroyed by a natural disaster, including fire, tropical storm, or hurricane, the establishment may be relocated within 1,000 feet of its original location on land that is properly zoned for this use, without regard for the 2,000-foot limitation in § 34-3068.

**Secs. 34-3070–34-3100. Reserved.**

**DIVISION 39. USE, OCCUPANCY, CONSTRUCTION, AND MOVING REGULATIONS**

**Sec. 34-3101. Compliance with applicable regulations.**

No building, structure, land, or water shall hereafter be used or occupied, and no building, structure or part thereof shall hereafter be erected, constructed, reconstructed, located, moved, or structurally altered, and no land shall be cleared, graded, excavated, or filled, or otherwise altered, except in conformity with the regulations specified in this chapter for the district in which it is located, the Fort Myers Beach Comprehensive Plan and all other applicable town ordinances.

**Sec. 34-3102. Reserved.**

**Sec. 34-3103. Permit for moving building.**

No building or part of any building shall be relocated or moved through or across any sidewalk, street, alley, or highway within the town unless a permit has first been obtained from the director in accordance with the procedures and application requirements for building relocation as set forth in § 34-1951. Buildings or structures that have been designated as historic resources pursuant to ch. 22 shall also obtain a certificate of appropriateness as provided in § 22-105.

**Secs. 34-3104--34-3130. Reserved.**

**DIVISION 40. VEHICLE VISIBILITY**

**Sec. 34-3131. Vehicle visibility at intersections.**

(a) *Corner lots; driveways on Estero Boulevard.*  
On all corner lots as defined in this chapter, no obstruction shall be planted or erected which materially obstructs traffic visibility within the visibility triangle as shown in Figure 34-31. This requirement also applies to all driveways entering onto Estero Boulevard. No structures (except along Old San Carlos Boulevard) or plantings shall be permitted between two feet and six feet above the average grade of each street within this triangular space.

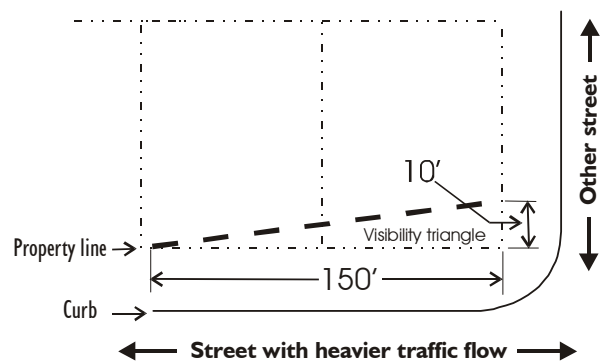


Figure 34-32



(b) **All other driveways and parking lot entrances.** At all other intersections of driveways or parking lot entrances with a street right-of-way or easement, no obstruction shall be planted or erected which materially obstructs the driver's view of approaching traffic or pedestrians within a visibility triangle as shown in Figure 34-32 on both sides of the driveway. No structures (except along Old San Carlos Boulevard) or plantings shall be permitted between two feet and six feet above the average grade of each street within this triangular space.

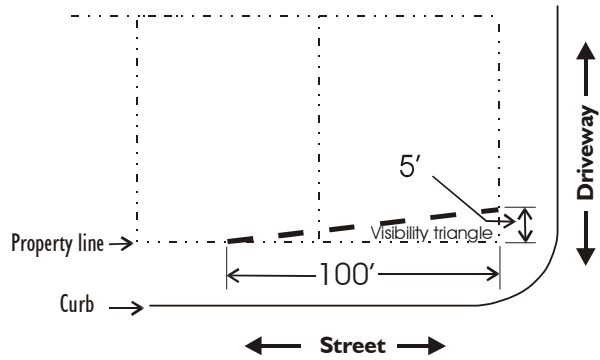


Figure 34-33

(c) **Trees and shrubs.** Where plantings are restricted between two feet and six feet in height, this restriction shall require the property owner to prune shrubs that extend above two feet and tree limbs that hang below six feet. The restriction on plantings shall not apply to the trunks of trees.

**Secs. 34-3132--34-3150. Reserved.**

## DIVISION 41. WATER-ORIENTED RENTALS

**Sec. 34-3151. Water-oriented rental establishments.**

(a) **Applicability.** This section addresses those outdoor rental activities that may be permitted on property adjacent to the Gulf of Mexico and are not located fully within a building. This section is supplemented by the specific standards for beach furniture and equipment that are found in ch. 14 and for personal watercraft rental businesses and parasail activities that are found in ch. 27 of this code.

(b) **Permitted districts.** Water-oriented rentals are permitted only in resorts as resort accessory uses and in certain zoning districts where permitted by right or by special exception (see division 2 of article III of this chapter). Locations for personal watercraft rental businesses and parasail activities are further restricted by § 27-51(a).

(c) **Location.** There may not be any indication from any street that these activities are occurring except as allowed by § 27-51(c)(5).

(d) **Setbacks.** The activity must be located within the side property lines and may not be permitted seaward of the minimum waterbody setback for the Gulf of Mexico as set forth in § 34-638(d)(3). Exceptions are:

- (1) Beach chairs and umbrellas may be displayed or placed anywhere landward of the mean high water line.
- (2) Personal watercraft rental operations and parasail activities that are authorized by this code are permitted seaward of the mean high water line as set forth in ch. 27.

(e) **Time limitations.** The rental activity may not occur between the hours of 9:00 P.M. and 8:00 A.M., and movement of personal watercraft is further restricted by § 27-49(4). Artificial lighting is prohibited.

(f) **Storage during sea turtle nesting season.** No structures or equipment of any kind may be left on the beach before or after regular business hours between the hours of 9:00 P.M. and 8:00 A.M. from May 1 until October 31. See also §§ 14-5, 14-78, and 27-49(9).

(g) **Signage.** The only signage permitted shall be those signs specifically authorized by § 27-51(c).

**Secs. 34-3152--34-3200. Reserved.**

## ARTICLE V. NONCONFORMITIES <sup>1</sup>

### DIVISION 1. GENERALLY

#### Sec. 34-3201. Purpose of article.

The regulations of this code and various amendments thereto have caused or will cause some buildings, uses, or lots to no longer conform with one or more provisions of this code.

- (1) It is the purpose of this article to set forth the rules and regulations regarding those nonconforming buildings, uses, or lots which were created by the adoption of this code or amendments thereto.
- (2) Nothing contained in this article is intended to preclude the enforcement of federal, state, and other local regulations that may be applicable.

#### Sec. 34-3202. Three types of nonconformities defined.

(a) **Three types of nonconformities.** There are three distinct types of nonconformities recognized by this article, with a separate division devoted to each. In situations where there is more than one type of nonconformity, for example a nonconforming use in a nonconforming building, all relevant divisions shall apply.

(b) **Nonconforming building.** For purposes of this article, the term “nonconforming building” means a building or structure, or portion thereof, which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to specific requirements where the building or structure is

located due to its size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations. See division 2 of this article for regulations on nonconforming buildings.

(c) **Nonconforming use.** For purposes of this article, the term “nonconforming use” means a use or activity which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to the use requirements where the property is located. See division 3 of this article for regulations on nonconforming uses.

(d) **Nonconforming lot.** For purposes of this article, the term “nonconforming lot” means a lot of which the area, dimension, or location was “lawful” (see definition in §34-2) prior to the adoption of any ordinance from which this code is derived, or prior to the adoption of any revision or amendment to this code, and which fails by reason of such adoption, revision, amendment, or rezoning to conform to the requirements where the lot is located. However, a lot which no longer conforms due to the adoption or revision of any comprehensive plan can only be developed in accordance with § 34-3274. See division 4 of this article for regulations on nonconforming lots.

#### Sec. 34-3203. Illegal buildings, uses, and lots.

If a building, use, or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses, or lots.

- (1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c).
- (2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations.

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<sup>1</sup> **Cross references**—Nonconforming marine structures, § 26-48; nonconforming structures on the beach, § 27-51(c)(6); nonconforming beach rental licenses, § 27-53, § 27-55; nonconforming signs, § 30-56; nonconforming establishments serving alcoholic beverages, § 34-1264(h); replacing a nonconforming hotel/motel, § 34-1806

**Sec. 34-3204. Amortization.**

Notwithstanding the general provisions of this article, other portions of this code may require that specific types of nonconforming buildings and uses must be modified into conformance with this code, or be eliminated, by a specific date. Such dates are established to allow owners a reasonable period to amortize the value of the nonconforming building or use.

**Sec. 34-3205. Reserved.****Sec. 34-3206. Nonconformities created by public acquisition.**

Public acquisition of a portion of a lot might cause the remainder to become nonconforming as to area, width, depth, setbacks, floor area ratio, or required parking.

- (1) To minimize the adverse effects of such acquisition, previous lawful buildings, structures, or lots that might be rendered nonconforming as to compliance with a specific requirement of this code shall be deemed conforming with that requirement rather than nonconforming.
- (2) This applies whether the acquisition occurred by eminent domain, purchase, or a publicly accepted donation of land or easements.

**Secs. 34-3207--34-3230. Reserved.**
**DIVISION 2.  
NONCONFORMING BUILDINGS**
**Sec. 34-3231. Nonconforming buildings defined.**

For purposes of this division, the term “*nonconforming building*” means a building or structure, or portion thereof, which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to specific requirements where the building or structure is located due to its size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.

**Sec. 34-3232. Continued use of a nonconforming building.**

The occupancy of a nonconforming building may be continued so long as it remains otherwise lawful. However, if the *specific use* of a nonconforming building is itself nonconforming, then that use is also subject to the provisions of division 3 of this article.

**Sec. 34-3233. Repairing a nonconforming building.**

(a) Internal repairs, reconstruction, and renewal may be made to nonconforming buildings in accordance with this section.

- (1) A nonconforming building may be altered to decrease its nonconformity.
- (2) Awnings and canopies may be attached to nonconforming buildings as provided in § 34-638(d)(1)d.
- (3) Commercial antennas may be installed on nonconforming buildings in accordance with § 34-1443(d).
- (4) Permits may be issued for reroofing and roof repairs for any existing mobile home or recreational vehicle, regardless of lot size.

(b) Internal repairs, reconstruction, and renewal of certain nonconforming buildings are limited in scope because the town desires for these buildings to be reconstructed in compliance with this code.

- (1) The limitations in this subsection apply only to buildings that are nonconforming:
  - a. due to *density* or *intensity* (see § 34-3234(b)(3)), or
  - b. due to *floodplain regulations* (see § 34-3234(b)(4)), or
  - c. due to *building type* (see § 34-3234(b)(5)).
- (2) For such nonconforming buildings, the director shall determine whether the repairs, reconstruction, or renewal, alone or in conjunction with other permitted improvements or enlargements, are major enough to be considered a “substantial improvement,” as that term is defined in § 6-405. See § 34-3234(b)(1) for details.

#### **Sec. 34-3234. Enlarging a nonconforming building.**

(a) The following types of nonconforming buildings may be physically enlarged, either laterally or vertically, so long as they remain otherwise lawful and the enlargement is in accordance with the regulations in this subsection:

- (1) ***If nonconforming due to setbacks.*** A nonconforming building which is lawful in all respects with the exception of a setback requirement or build-to line (see § 34-662) may be enlarged, provided that:
  - a. The enlargement is otherwise permitted; and
  - b. The enlargement itself, including any enlargement which increases the height or volume of the structure, complies with all the setback requirements and fully complies with any applicable build-to lines.
  - c. Also see § 34-268 regarding certain administrative setback variances that may be available for nonconforming buildings.
- (2) ***If nonconforming due to lot area.*** A nonconforming building which is lawful in all respects with the exception of lot area requirements may be enlarged, provided that:
  - a. The enlargement is otherwise permitted;
  - b. All other property development requirements such as setbacks, height, floor area ratio, density, intensity, parking, and open space are met.
- (3) ***If nonconforming due to height.*** A nonconforming building which is lawful in all respects with the exception of height restrictions may be enlarged, provided that:
  - a. The enlargement is otherwise permitted; and
  - b. The enlargement itself complies with current height and setback requirements.
- (4) ***If nonconforming due to floor area ratio.*** A nonconforming building which is lawful in all respects with the exception of floor-area-ratio shall not be enlarged.
  - (b) Certain other types of nonconforming buildings have special limitations on the extent to which they may be repaired and physically enlarged because the town desires for these buildings to be reconstructed in compliance with this code.
    - (1) The combined cost of enlargements and any repairs to such nonconforming buildings or structures shall be reviewed by the director to determine whether they are major enough to be considered a “substantial improvement,” as that term is defined in § 6-405.
      - a. If the improvements *do not* constitute a “substantial improvement,” their value shall be recorded with the director for the purpose of establishing the extent of allowable future repairs, enlargements, or replacements, using the same methodology as for improvements in the floodplain (article IV of ch. 6).
      - b. If the improvements constitute a “substantial improvement,” they will be approved only if they result in the building fully complying with all regulations for new buildings on vacant land, except as provided in the buildback regulations found in §§ 34-3237 and 34-3238.
    - (2) These special limitations on “substantial improvements” apply to the following types of nonconforming buildings, in addition to the specific limitations provided below for each type.
    - (3) ***If nonconforming due to density or intensity.*** A building, or a group of buildings or structures, may be nonconforming because there are more residential dwelling units, or more guest units, or a greater floor-area-ratio, than currently permitted by this chapter or by the Fort Myers Beach Comprehensive Plan. Substantial improvements to such buildings may not physically enlarge them, either laterally or vertically, and they may not be replaced, except under one of the following three circumstances:

- a. If the enlargement or replacement complies entirely with this code and the comprehensive plan as they apply to new buildings on vacant land, including the current density limits on dwelling units and guest units, current height limits, and current caps on floor-area-ratio; or
  - b. If the replacement has been approved by the town council in accordance with the pre-disaster buildback regulations, as described in § 34-3237; or
  - c. If the building is damaged or destroyed by a natural disaster and its replacement meets all requirements of the post-disaster buildback regulations, as described in § 34-3238.
- (4) ***If nonconforming due to floodplain regulations.*** A nonconforming building whose lowest floor does not meet the base flood elevation requirements for new buildings can only be expanded in accordance with the standards in § 6-472.
- (5) ***If nonconforming due to building type.*** Certain buildings are nonconforming due to fundamental design and construction differences between them and new buildings that are permitted in the same zoning district.
- a. *Building type described.* Examples include recreational vehicles or mobile homes in zoning districts that do not permit them; automobile service stations or drive-through facilities in pedestrian-oriented commercial districts, and storefront buildings in residential districts. However, buildings that might be considered nonconforming solely due to technical changes in the building codes (which are described in article II of ch. 6) are not classified as nonconforming buildings for the purposes of this article and may be expanded if they are otherwise in conformance with all requirements for their location.
  - b. *Mobile homes outside mobile home parks.* See § 34-1921.
  - c. *Mobile homes in mobile home parks.* See §§ 34-694 and 34-1922.
  - d. *Other nonconforming building types.* Other buildings that are nonconforming due to building type cannot be “substantially improved” as described in § 6-405 unless they are altered to eliminate this type of nonconformity.

#### **Sec. 34-3235. Moving a nonconforming building.**

(a) Should a nonconforming building be moved on-site for any reason, for any distance whatever, it shall not be moved unless the relocation decreases the nonconformity.

(b) A nonconforming building that is being moved off-site shall only be placed on its new site in full conformance with this code.

(c) See §§ 34-1951 and 34-3103 regarding permits for moving buildings.

#### **Sec. 34-3236. Replacing a nonconforming building.**

Nonconforming buildings can be replaced in one of the following manners:

- (1) In full conformance with all current provisions of this code as they apply to new buildings on vacant land; or
- (2) In the same manner as provided for enlargements to the various types of nonconforming buildings as provided in § 34-3234; or
- (3) As provided by the buildback regulations found in §§ 34-3237 and 34-3238.

**Sec. 34-3237. Pre-disaster buildback.**

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings may seek permission from the town council to voluntarily replace those buildings at up to the existing lawful density or intensity and up to the existing height in accordance with Policy 4-E-1 of the Fort Myers Beach Comprehensive Plan, as follows:

- (1) The replacement building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6.
- (2) The replacement building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be rebuilt landward of the 1978 coastal construction control line.
- (3) The replacement building must comply with all current building, life safety, and accessibility codes.
- (4) The replacement building cannot exceed the lawful density and intensity of the existing building:
  - a. as measured for residential buildings in § 34-3238(2)d.;
  - b. as measured for hotel/motels in § 34-3238(2)e.; or
  - c. as measured for all other buildings by the gross square footage.
- (5) Each specific pre-disaster buildback proposal must be proposed to the town council through the planned development rezoning process (see division 6 of article III of this chapter), along with any proposed deviations from this code.
- (6) The town council will approve, modify, or deny each such request based on its opinion of the degree of conformance of the specific proposal with the Fort Myers Beach comprehensive plan, specifically including the plan's land-use and community design policies, pedestrian orientation, and natural resource criteria.
- (7) If the lowest floor of the rebuilt building must be elevated higher than the existing building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount. However, any pre-disaster buildback request for additional height beyond that increment must comply with Policy 4-C-4 of the comprehensive plan in the same manner as that policy would apply to an entirely new building on vacant land.

**Sec. 34-3238. Post-disaster buildback.**

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a natural disaster, including fire, tropical storms, and hurricanes, shall be permitted to replace those buildings at up to their existing lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan.

- (1) ***Less than 50% damage.*** If the cost to repair the damaged building is *less than 50%* of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405, then the following rules shall apply:
  - a. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.
  - b. The repairs may not physically enlarge the building either laterally or vertically, with the following potential exception:
    1. During the repair process, owners may wish to elevate lawfully existing dwelling units or guest units that do not comply with the floodplain regulations in ch. 6 of this code.
    2. To encourage this elevation, the director may administratively modify setbacks, open space, buffer, or height requirements to the minimum extent that would accommodate rebuilding the units in conformance with ch. 6 up to their existing interior square footage, as computed in accordance with §§ 34-3238(2)d.1 or e.1.
    3. However, if the combined cost to repair the damage and elevate the units exceeds 50% of the building's value, then all provisions of § 34-3238(2) will apply.
  - c. All repairs must comply with all current building, life safety, and accessibility codes.
- (2) ***More than 50% damage.*** If the cost to repair or rebuild the damaged building is *more than 50%* of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405, then the following rules shall apply:
  - a. The building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6.
  - b. The building must meet the coastal construction requirements that apply to new

structures and portions thereof, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures that are damaged by more than 50% must be rebuilt landward of the 1978 coastal construction control line.

c. The building must comply with all current building, life safety, and accessibility codes.

d. **Residential buildings.** A rebuilt residential building may exceed the density limits for new buildings on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.

1. All dwelling units legally existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air-conditioned space.
2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.
3. Also at the owner's option, the number of dwelling units and the square footage of the new building may be determined by this code's current regulations for new buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.

e. **Hotels/motels.** A rebuilt hotel/motel may exceed the intensity limits for new hotel/motel buildings on vacant land, but cannot exceed the documented number of lawful guest units in the building immediately before the natural disaster.

1. All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For

purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air-conditioned space.

2. At the owner's option, this same square footage can be used for fewer but larger guest units.
3. Also at the owner's option, the number of guest units and the square footage of the new building may be determined by this code's current regulations for new hotel/motel buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.

f. **All buildings.** The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:

1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.
2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.
3. If current open space or buffer regulations cannot be met, those requirements may be waived administratively by the director.

**Secs. 34-3239--34-3240. Reserved.**

### **DIVISION 3. NONCONFORMING USES**

#### **Sec. 34-3241. Nonconforming uses generally.**

(a) For purposes of this division, the term “*nonconforming use*” means a use or activity which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to the use requirements where the property is located.

(b) A residential use may not conform because it contains one or more dwelling units more than are permitted under current regulations. If the extra dwelling unit(s) were fully lawful at the time they were created, for the purposes of this article they shall be deemed a *nonconforming building* rather than a *nonconforming use*. The regulations governing nonconforming buildings are found in division 2 of this article; see especially § 34-3234(b)(3) for restrictions on expanding buildings that are nonconforming due to density or intensity.

(c) A nonconforming use of a building, land, or building and land in combination may be continued subject to the limitations found in this division. If the nonconforming use is located in a nonconforming building, the additional requirements of division 2 of this article shall also apply to the building.

#### **Sec. 34-3242. Enlarging a nonconforming use.**

(a) No such nonconforming use shall be extended or enlarged:

- (1) by having any buildings or structures replaced or expanded in physical size; or
- (2) by any increase in land or water area devoted to the nonconforming use; or
- (3) by any increase in the size or number or vehicles and boats, or increase in the capacity of services such as parking lots that would expand the operation of the nonconforming use.

(b) No additional structures shall be erected in connection with a nonconforming use.

(c) Nonconforming establishments that sell, serve, or allow the consumption of alcoholic beverages are further limited by § 34-1264(h).

(d) The installation of a commercial antenna on a building containing a nonconforming use will not be deemed to constitute an expansion of the nonconforming use (see § 34-1443(d)).

#### **Sec. 34-3243. Replacing a nonconforming use.**

No nonconforming use shall be replaced by another use not specifically permitted where the nonconforming use is located.

#### **Sec. 34-3244. Discontinuing a nonconforming use.**

When a nonconforming use is discontinued or abandoned for nine consecutive months, the use shall not thereafter be carried out or reestablished except in conformance with all current regulations.

#### **Sec. 34-3245. Repairing a building containing a nonconforming use.**

Only ordinary repairs and maintenance, including repairs of roof covering, walls, fixtures, wiring, or plumbing, shall be permitted on any building or structure devoted to a nonconforming use. In no case shall such repairs include structural alterations.

#### **Sec. 34-3246. Nonconforming uses approved by special exception or permit.**

Uses approved by special exception or other permits which were issued or granted by the town council or board of county commissioners before the effective date of any ordinance from which this code is derived, and which are no longer permitted in the zoning district where located, shall be considered to be nonconforming uses and subject to the provisions of this article if the actual use was in operation within two years after its approval by special exception or other permit and has not thereafter been discontinued or abandoned for any nine consecutive months.

#### **Secs. 34-3247--34-3270. Reserved.**



## DIVISION 4. NONCONFORMING LOTS

### **Sec. 34-3271. Definition of nonconforming lot.**

(a) *Lot* means a parcel of land that has been created from a larger parcel and whose precise dimensions and location were identified through public notice (see § 34-3272).

(b) “*Nonconforming lot*” means a lot of which the area, dimension, or location was “lawful” (see definition in § 34-2) prior to the adoption of any ordinance from which this code is derived, or prior to the adoption of any revision or amendment to this code, or prior to being rezoned, and which fails by reason of such adoption, revision, amendment, or rezoning to conform to the requirements where the lot is located. However, a lot which no longer conforms due to the adoption or revision of any comprehensive plan can only be developed in accordance with § 34-3274.

(c) See § 34-3234(a)(2) for the situation where a nonconforming building with a conforming use exists on a lot whose lot area is smaller than required by its zoning district.

### **Sec. 34-3272. Determining when a lot was created.**

For the purpose of this division, a lot is deemed to have been “created” on such date that one of the following conditions occur, provided the configuration of the lot was not later altered:

- (1) *Individual deed*. The date that a deed for the lot containing its full legal description was lawfully recorded in the official record books in the office of the clerk of the circuit court of the county;
- (2) *Subdivision plat*. The date that a subdivision plat has been lawfully recorded in the plat books in the office of the clerk of the circuit court of the county, if the individual lot is clearly identified as a part of that subdivision;

### **Sec. 34-3273. General requirements for residential uses on nonconforming lots.**

Nonconforming lots may be developed subject to the following provisions:

- (1) All other regulations of this chapter shall be met, except as modified by this division.
- (2) A residential building may be placed on a single nonconforming lot provided the lot has at least 40 feet in width, 75 feet in depth, and 4,000 square feet in area.
- (3) Minimum residential setbacks on nonconforming lots shall be as follows:
  - a. Street and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
  - b. Side setbacks shall be 10% of lot width, or 5 feet, whichever is greater.
  - c. Rear setbacks shall be 25% of lot depth, or 20 feet, whichever is smaller.
  - d. Certain nonconforming lots may qualify for an administrative setback variance (see § 34-268).
- (4) Any development on nonconforming lots must comply with all density restrictions of the Fort Myers Beach Comprehensive Plan.
  - a. Density computations shall be in accordance with § 34-632.
  - b. If density computations do not allow even one dwelling unit on a nonconforming lot, one single-family residence may still be permitted if a minimum-use determination is obtained in accordance with § 34-3274.
- (5) No division of any nonconforming lot may be permitted which creates a lot with width, depth, or area below the minimum requirements stated in this chapter, except for combinations and redivisions in accordance with § 34-3275.
- (6) The burden of proof for demonstrating that a lot is a nonconforming lot in accordance with this division, and lawfully existed at the specified date, shall be with the owner.
- (7) The remaining lot after condemnation shall be treated in accordance with § 34-3206.

**Sec. 34-3274. Minimum use determinations.**

(a) A single-family residence may also be constructed on a nonconforming lot which *does not* comply with the density requirements of the Fort Myers Beach Comprehensive Plan, provided the owner receives a favorable administrative interpretation of the single-family residence provision (also known as a minimum use determination) in accordance with ch. 15 of the Fort Myers Beach Comprehensive Plan.

(b) To qualify for a minimum use determination, the following additional requirements must be met:

- (1) Minimum lot requirements:
  - a. Lot area of 4,000 square feet if the lot was created prior to 1962; or
  - b. Lot width of 50 feet and lot area of 5,000 square feet if part of a platted subdivision recorded between 1962 and 1984; or
  - c. Lot area of 7,500 square feet if not part of a platted subdivision created between 1962 and 1984; or
  - d. Lot width, depth, and area were in conformance with the zoning regulations if created after 1984; or
  - e. Lot sizes were explicitly approved as part of a planned development rezoning.
- (2) Ownership requirements:
  - a. Prior to November 21, 2000, the lot shall have been vacant or shall have been improved with one structure located wholly on this lot.
  - b. If a structure had been placed on two or more adjoining lots at any time prior to November 21, 2000, the individual lots shall not qualify for this determination.

(c) Lots qualifying for a minimum use determination may not place the home, accessory structures, or driveways on any land in the “Wetlands” or “Recreation” category on the future land use map of the comprehensive plan.

(d) The rights granted by a minimum use determination run with the lot and are available to any subsequent owner if the lot is transferred in its entirety.

(e) Applications for a minimum use determination shall be filed with the town clerk in accordance with ch. 15 of the comprehensive plan. Complete applications will be reviewed by the legal

counsel for the local planning agency (see § 34-124(3)) and may be referred to the local planning agency for a decision (see § 34-120(6)).

**Sec. 34-3275. Combining nonconforming lots.**

(a) Abutting nonconforming lots may be combined and redivided to create larger dimension lots as long as such recombination includes all parts of all lots, allowable density is not increased, and all setback requirements are met. Under these conditions the new lots do not need to meet this code’s dimensional requirements for new lots.

(b) If two or more abutting nonconforming lots each qualify for the right to construct a single-family residence, and if the lots or parcels are located in a zoning district that permits two-family dwellings, the property owner may combine the lots to build a single two-family building in lieu of constructing two single-family residences.

**Sec. 34-3276. Replacing a mobile home on a nonconforming lot.**

A mobile home may be replaced on a nonconforming lot only if allowed by the zoning district regulations and only in accordance with § 34-3234(b)(5).

**Sec. 34-3277. Commercial use on a nonconforming lot.**

commercial districts where the public interest is served by such a rezoning.

(a) A commercial use of land may be commenced on a single nonconforming lot lawfully existing on February 4, 1978, subject to the specific limitations and regulations set forth in this section, provided that the lot is zoned for such use. However, the lot must be appropriately located and adequate in size and dimension to accommodate the use contemplated and all spatial requirements, i.e., proposed structures, setbacks, parking, access, surface water management facilities, and, where required, buffers, in addition to these specific requirements:

- (1) ***Lots created prior to 1962.*** If the nonconforming lot was lawfully created prior to June 1962, it must be at least 4,000 square feet in area and have a minimum width of 40 feet and a minimum depth of 75 feet. Minimum setbacks for structures are as follows:
  - a. Street setbacks, build-to lines, and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
  - b. Side setbacks shall be 20 percent of lot width, or 15 feet, whichever is less.
  - c. Rear setbacks shall be one-half of the lot depth less the street setback, or five feet, whichever is greater, but not more than 25 feet.
- (2) ***Lots created 1962–1978.*** If the nonconforming lot was created between June 1962 and January 5, 1978, and was lawfully existing on February 4, 1978, it must be at least 7,500 square feet in area and have a minimum width of 75 feet and a minimum depth of 100 feet. Minimum setbacks for structures are as follows:
  - a. Street setbacks, build-to lines, and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
  - b. Side setbacks shall be 15 feet.
  - c. Rear setbacks shall be one-half the lot depth less the street setback, or five feet, whichever is greater, but not more than 25 feet.

(b) Nothing in this division shall be construed to prohibit the rezoning of nonconforming lots into